Supreme Court, U.S.
FILED

021496 APR 10 2003

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No.

In The Supreme Court of the United States

JAMES WRAY,
Petitioner,
v.
CHARLES JOHNSON, INDIVIDUALLY;
CHARLES JOHNSON AND/OR DAVID
JOHNSON TRUSTEE OF THE HOYT SIBLEY
AND MARY SIBLEY 1973 TRUST,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada

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PETITION FOR WRIT OF CERTIORARI

James Wray
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152 PP

QUESTIONS PRESENTED

Question #1:

It is believed that the Nevada Supreme Court frequently alters the facts in cases in order to allow certain parties to win. Petitioner and his brother lost their inheritance from their mother when the Nevada Supreme Court dismissed their restitution and malpractice case on statute of limitation grounds. The undisputed facts showed Petitioner and his brother filed their action well within the applicable time limits. The question presented is:

Whether citizens are denied their right to due process and equal protection, as guaranteed by §1 of the 14th Amendment to the United States Constitution, when a highest state court fraudulently misstates the facts of their case and dismisses their case based upon the misstated facts.

Question #2:

Whether the United State Supreme Court should recognize an exception to absolute judicial immunity from suits for damages when it is undisputed that justices of a state's highest court have fabricated fraudulent facts and dismissed a case based upon those fraudulent facts and refused to correct the fraud after being requested to alter the indisputably fraudulent facts.

Question #3:

Whether the Supreme Court should recognize an exception to the *Rooker-Feldman* doctrine to allow a lower federal court to review a state court decision pursuant to 42 USCS § 1983 when it is undisputed that the highest court of a state has fabricated fraudulent facts and dismissed a case based upon those fraudulent facts, thereby depriving a citizen of federal constitutional rights under color of state law.

PARTIES TO PROCEEDING

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[1] James Wray is not in the U.S. Supreme Court Bar. So, he is filing pro se. He is in the Nevada and California bars.

[2] Appellant David Wray has joined in Appellant James Wray's briefs below and is expected to join in or adopt the Petition for Writ of Certiorari by means of a letter to the clerk, as is said to be proper on page 396 of **Supreme Court Practice**, 8th Ed. (2002).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	ii
PARTIES TO PROCEEDING	iii
TABLE OF AUTHORITIES	vii
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE PETITION	13
1. CITIZENS ARE DENIED THEIR RIGHT TO DUE PROCESS, AS GUARANTEED BY §1 OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHEN A CORRUPT STATE COURT FRAUDULENTLY MISSTATES THE FACTS OF THEIR CASE, AND DISMISSES THE CASE BASED UPON THE MISSTATED FACTS, AND ANY RESULTING JUDGMENT IS VOID.	13
2. THE UNITED STATE SUPREME COURT SHOULD RECOGNIZE AN EXCEPTION TO AESOLUTE JUDICIAL IMMUNITY FROM SUITS FOR DAMAGES	

WHERE IT IS UNDISPUTED THAT JUSTICES OF A STATES HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO ALTER THE INDISPUTABLY FRAUDULENT FACTS. 20

3. IF THE UNITED STATES SUPREME COURT RECOGNIZES AN EXCEPTION TO ABSOLUTE JUDICIAL IMMUNITY FROM SUITS FOR DAMAGES WHERE JUSTICES OF A STATE'S HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO ALTER THE INDISPUTABLY FRAUDULENT FACTS, THERE IS NO MEANINGFUL REMEDY UNLESS PERSONS HARMED CAN SUE IN THE FEDERAL SYSTEM PURSUANT TO 42 USCS § 1983. 24

4. IF THE SUPREME COURT ALLOWS 42 USCS 1983 CASES TO BE BROUGHT WHERE JUSTICES OF A STATE'S HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO

ALTER THE INDISPUTABLY FRAUDULENT FACTS, THE SUPREME COURT SHOULD ALSO ALLOW THAT THE FRAUDULENT JUDGMENTS RESULTING FROM SUCH MISCONDUCT CAN BE NOT ONLY EXAMINED AS EVIDENCE, BUT RULED VOID BY FEDERAL COURTS PRESIDING OVER SUCH 42 USCS 1983 CASES. 26

CONCLUSION 27

TABLE OF AUTHORITIES

	Page(s)
Cases:	
Dababnah v. West Virginia Bd. Of Medicine, 47 F. Supp.2d 734 (S.D.W.Va. 1999)	13
Forester v. White, 484 U.S. 219, 226, 227, 230, 108 S.Ct. 538, 544, 545, 546, 98 L.Ed.2d 555 (1988)	20
Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995)	25
Constitutional and Statutory Provisions:	
Section 1 of the 14th Amendment to the United States Constitution	1, 2, 3, 4, 5, 6, 13, 17, 18, 19, 20,
28 U.S.C. § 1257(a)	2, 3, 23, 26
42 USCS § 1983	3, 25, 26, 27,
Other Authority:	
Las Vegas Review-Journal	14
Nevada Lawyer	17
Rooker-Feldman doctrine	3, 26-27
27 San Diego Law Review 1 (1990)	24

Supreme Court Practice,
8th Edition (2002) ..... iii, 2, 3, 20, 23, 26,

Supreme Court's Views As to Judges Liability for Damages,
116 L.Ed. 947, 954 25

PETITION FOR WRIT OF CERTIORARI

Petitioner James Wray prays that a writ of certiorari be issued to review the final judgment of the Nevada Supreme Court, the Order Denying Motions which was filed on March 21, 2003 (App., infra, 12a - 14a). Petitioner also requests review of the Nevada Supreme Court's: Order of Affirmance filed December 17, 2002 (App., infra, 4a - 9a) and Order Denying Rehearing. (App., infra, 10a - 11a).

OPINION BELOW

On December 17, 2002, the Nevada Supreme Court filed its unreported Order Of Affirmance. (App., infra, 4a - 9a) On December 31, 2002, Petitioner filed his Petition for Rehearing. (App., infra, 15a - 34a) On February 20, 2003, the Nevada Supreme Court filed its unreported Order Denying Rehearing. (App., infra, 10a - 11a) On February 25, 2003, Petitioner filed his: "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003. & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution". (App., infra, 35a - 54a) On March 10, 2003, Petitioner filed his: "MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ..." (App., infra, 66a - 108a) On March 21, 2003, the Nevada Supreme Court filed its unreported Order Denying Motions in which it denied all Petitioner's Motions before it. (App., infra, 12a - 14a)

JURISDICTION

On December 17, 2002, the Nevada Supreme Court filed its unreported Order Of Affirmance. (App., infra, 4a - 9a) On December 31, 2002, Petitioner timely filed his Petition for Rehearing. (App., infra, 15a - 34a) *The Nevada Supreme Court Order Denying Rehearing was filed February 20, 2003.* (App., infra, 10a - 11a) On February 25, 2003, Petitioner filed his: "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003. & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution" (App., infra, 35a - 54a) *On March 21, 2003, the Nevada Supreme Court filed its Order Denying Motions.* (App., infra, 12a -14a)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) in order to review the final order of the Nevada Supreme Court filed March 21, 2003, its Order Denying Motions (App., infra, 12a -14a) [1] and also its Order

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[1] In his Motion of February 25, 2003 to the Nevada Supreme Court that it correct its fraudulent orders (App., infra, 35a - 54a), the Petitioner sought relief which **should** have caused that Court to:

1. Alter the incorrect findings of fact found in the December 17, 2002 Order of Affirmance (App., infra, 4a-9a); and,

2..Also alter its Order Denying Rehearing of February 20, 2003 (App., infra, 10a - 11a).

Further, we have been instructed in **Supreme Court Practice:**

> "A timely motion to amend a judgment (or the findings of fact or conclusions of law) that raises "questions of substance" that may alter rights already adjudicated, and its not addressed to "mere matters of form," tolls the time to appeal. *Leishman v. Associated Wholesale Electric Co.*, 318 U.S. 203, 205-06 (1943); *United States v. Crescent Amusement Co.*, 323 U.S. 173, 177 (1944); *Zimmern v. United States*, 298 U.S. 167, 169 (1936). Such a substantial change

Denying Rehearing filed February 20, 2003 (App., infra, 10a - 11a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the 14th Amendment to the United States Constitution states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of** life, liberty, or **property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**" (Emphasis added.)

Also involved in the requested relief are: **42 USCS § 1983** and **28 U.S.C. § 1257(a)**, as it relates to the *Rooker-Feldman* doctrine. Those statutes are reproduced, respectively at App., infra, at 95a and 96a.

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in judgment by the judge or court on its own motion will have the same effect. *Zimmern v. United States, supra.* ..." **Supreme Court Practice**, 8th Edition (2002) at page 357.

Thus, Petitioner has filed this Petition for Writ of Certiorari to review the March 21, 2003 Nevada Supreme Court Order Denying Motion (App., infra, 10a - 11a) which denied all Petitioner's Motions then before the Nevada Court and that is the actual final judgment from which it is proper to file this Petition. However, this Petition is being filed within the 90 time period following the February 20, 2003 Order Denying Rehearing (App., infra, 10a-11a).

STATEMENT OF THE CASE

On February 25, 2003, Petitioner filed his: "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003. & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution" (App., infra, 35a - 54a) *On March 21, 2003, the Nevada Supreme Court filed its Order Denying Motions in which it* ***acknowledged that Petitioner had alleged violation of Section 1 of the 14th Amendment to the United States Constitution.*** *Then, without further comment on the constitutional violation, the Nevada Supreme Court denied all Petitioner's Motions before it* (App., infra, 12a -14a).

Petitioner told the Nevada Supreme Court:

> "Appellants have sued:
>
> 1) Respondent Charles Johnson, a prominent Nevada Attorney [should read: "attorney"], for malpractice and fraud. Charles Johnson was Petitioner's mother's attorney and who helped Petitioner's stepfather changed [should read: "change"] her estate plan, after she died, to disinherit Petitioner and his brother from her trust; and,
>
> 2) Respondent, David Johnson, the son and legal associate of Charles Johnson, for restitution and accounting because he was made Trustee of our trust by his father. (Cite omitted here.)
>
> The Nevada Supreme Court found:
>
> 1) Appellants failed to comply with the statute of limitations, even though Appellants filed their action within 5 months of:
>
> a) Being Damaged; and/or

b) Discovering Appellants were disinherited; and/or

c) Discovering that David Johnson had been made trustee of the trust which rightfully belongs to Appellants; and,

2) Appellants could not sue our mother's attorney for fraud because we had not relied upon the lies he told at his deposition. (Cite omitted here.)

The Supreme Court further used the legal malpractice statute of limitations to dismiss the action against David Johnson, even though he was not sued for malpractice, but was only sued for restitution and an accounting. (Cite omitted here.)" (Please see Petitioners Motion that the Nevada Supreme Court Correct Its fraudulent Orders ..." , App., infra, 35a - 54a, quote at 38a - 39a)

In his "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ..." (App., infra, 35a - 54a, upcoming quote at 45a - 46a) Petitioner has also told the Nevada Supreme Court:

"The totally amazing blatantly bias Orders of December 17, 2002 and February 20, 2003 are in violation of **Section 1 of the 14th Amendment to the United States Constitution which reads**:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of** life, liberty, or **property, without due process of law**; **nor deny**

to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Appellants does hereby thus also ask that the Nevada Supreme Court make a finding that its Orders of December 17, 2002 and February 20, 2003 did indeed violate **Section 1 of the 14th Amendment to the United States Constitution** and for this reason, **paramount to any other reason,** these Orders are unconstitutional and must be replaced with a new order[s] in conformity with:

1) The **actual facts** as disclosed in the joint appendix,

2) An accurate evaluation of the issues which were raised in the Briefs; and

3) An application of the applicable law pertaining to the arguments raised in the Briefs."

The appropriate times to raise this federal question was after the Nevada Supreme Court:

1) Had been given notice of its errors in the December 31, 2002 Petition for Rehearing; and,

2) Failed to correct its errors and filed its February 20, 2003 Order Denying Rehearing.

Because, until both of these had occurred, it would have not been possible to allege an **intentional** misstatement of the facts by the Nevada Supreme Court. Thus, the constitutional issue was raised appropriately in Petitioner's February 25, 2003 Motion (App., infra, 35a - 54a).

Petitioner has explained in his February 25, 2003 "MOTION THAT THE NEVADA SUPREME COURT

CORRECT ITS fraudulent ORDERS ..." and **it is undisputed** [2] that:

> "The (Nevada) Supreme Court Order (of December 17, 2003 which is confirmed by the Order of February 20, 2003) is based upon **SIX (6) MAJOR factual Falsehoods**.
>
> **Falsehood #1:** Appellants sued Charles Johnson for errors in drafting the trust. **The truth is:**
>
> A) Paragraph 14 in both the Complaint and Amended Complaint reads:
>
> "14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)
>
> B) Charles Johnson testified, after

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[2] Respondents have stated:

"... Respondent (David Johnson, Trustee) will not substantively address the arguments raised in the Motion (MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...) unless the Court so requests." Opposition of David Johnson (App., infra, 55a - 58a, quote at 56a)

and

"... It is respectively requested that the Court advise your Respondent, Charles Johnson, individually, if a substantive Responding Brief is required by Appellant's latest Motion (MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...). ..." Opposition of Charles Johnson (App., infra, 59a - 65a, quote at 64a)

Further, the Nevada Supreme Court does not dispute any of the allegations of "6 falsehoods that are contained in this court's ... orders." (See Order Denying Motions (App., infra, 12a - 14a, quote at 13a)

consulting with his attorney, regarding the affirmative defense of statute of limitations:

"A. **As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place**, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

" ...;

b) Breach of his duty to [should read "of"] **loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where** [should read "were"] **completely denied their inheritance;** ..." (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8 [of the Petition].)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000

unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6 [of the Petition].)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.** (Please see footnote #4 on page 6 [of the Petition].) After Mary's death, Hoyt was restricted **by the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [See footnote #1 on page 3 of the Petition.]

C) Pursuant to identical **Sibley wills provisions 4.3**, the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death.** ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on page 5 [of the Petition].)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in 1991 (Therefore, Appellant's April 24, 1998 Complaint [1.J.A. 1] was filed after the running of the Statute of Limitations).. **The truth is:**

A) Although Mr. Sibley with the help of Charles Johnson's firm did prepare six [6] amendments from 1992 -1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage**

Appellants upon the death of Hoyt Sibley (December 20, 1997). (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2 [of the Petition]); because the special power is void (ft.nt. #4 & ft.nt. #5 [of the Petition]); and because Hoyt could not **alone** appoint or direct distributions from the survivor's trust (ft.nt.#1 [of the Petition]), **etc**.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it.

...

And the assets are still in the trust. ..." (2 J.A. 397)

"Q. **It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.**

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)
(Please see footnote #9 on page 8 [of the Petition].)

Falsehood #4: Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary

Sibley died. **The truth is:** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.** All six of those times are accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died. (Please see footnote #6 on page 7 [of the Petition] where this truth is elaborated upon.)

Falsehood #5: David Johnson has been sued for malpractice and fraud. **The truth is:** David Johnson has been sued **only for restitution and an accounting** and in his Answering Brief at pages 24-25, David Johnson states:

"Wray's claim in this litigation is for legal malpractice against Charles Johnson ...

...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8 [of the Petition].)

Falsehood #6: Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their **justifiable reliance that**

Charles Johnson, as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust.** Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10 [of the Petition].) (Please see the "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ..."(App., infra, 35a - 54a, quote at 39a - 44a))

On March 21, 2003, the Nevada Supreme Court filed its Order Denying all Motions in which that court failed to dispute any of the above six factual falsehoods. (App., infra, 12a - 14a) Further, as mentioned, supra, the Respondents have not disputed anything said in Petitioner's allegation that the court's subject Orders were based upon "factual falsehoods" as Respondents have stated:

> "... Respondent (David Johnson, Trustee) will not substantively address the arguments raised in the Motion (MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...)unless the Court so requests." Opposition of David Johnson (App., infra, 55a - 58a, quote at 56a)

and

> "... It is respectively requested that the Court advise your Respondent, Charles Johnson, individually, if a substantive Responding Brief is required by Appellant's latest Motion (MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...). ..." Opposition of Charles Johnson (App., infra, 59a - 65a, quote at 64a)

REASONS FOR GRANTING THE PETITION

1. CITIZENS ARE DENIED THEIR RIGHT TO DUE PROCESS, AS GUARANTEED BY §1 OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHEN A CORRUPT STATE COURT FRAUDULENTLY MISSTATES THE FACTS OF THEIR CASE, AND DISMISSES THE CASE BASED UPON THE MISSTATED FACTS, AND ANY RESULTING JUDGMENT IS VOID.

It is reported that we have been cautioned, by United States Supreme Court Justice Anthony M. Kennedy:

> "... Just recently, two justices of the United States Supreme Court spoke out against threats to judicial neutrality. One of those threats, according to Justice Anthony M. Kennedy, is campaign spending in state judicial elections. See Joan Biskupie, In Rare Appearances, 2 Justices Concur Against Threats to Neutrality, Wash.Post, December 6,, 1998, available in 1998 WL 22539304. Justice Kennedy made a more impassioned point in summarizing his concerns: "**The law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. All that's left is the dictate of a tyrant, or a mob.**" Dababnah v. West Virginia Bd. Of Medicine, 47 F. Supp.2d 734 (S.D.W.Va. 1999) (Emphasis added.)

> "Petitioner James Wray has heard it frequently said that the Nevada judiciary is very corrupt and that when your case comes back from the Nevada Supreme Court you won't know it. This case has proven that this is true. Except for appointments to fill judicial vacancies between elections, Nevada elects its judges and the judicial campaigns are expensive and funded

primarily by the law firms and lawyers in town. It is widely believed that such funding greatly influences Nevada court decisions, including those of the Nevada Supreme Court. I have never contributed to a judicial campaign. The **Las Vegas Review-Journal** has the largest circulation in the State of Nevada. It is a mainstream paper and not radical. It has printed articles critical of the Nevada judiciary." (Please see the Affidavit of Petitioner James Wray, App., infra, 113a-116a, quote on 115a-116a).

Reporter Jane Ann Morrison wrote the following article which appeared in the **Las Vegas Review-Journal** on December 11, 2002 on page 5B:

"JUDGING THE JUDGES

Panel debates election, appointing

A failed judicial candidate blasted Nevada's judges and what he called "the corruption of our judicial system by money" during a Tuesday forum on whether judges should be elected or appointed.

John Curtas damned both methods of choosing judges before admitting he didn't have a solution to fix the system.

Curtas, who lost to incumbent District Judge Donald Mosley by 26 percentage points in November's election, said: "I think we have a supremely unqualified judiciary. ... (The "..." is in the original article.) There are a huge number of sitting judges at every level who have no business being there."

The judges who obtain their posts through gubernatorial appointments "are more atrocious than those elected," Curtas said without naming any names.

The deciding factor in judicial races is how much money can be raised for television ads, Curtas

said during the daylong forum at the University of Nevada Las Vega Boyd Law School.

The panel included lawyers, judges, academics and a newspaper editor {Thomas Mitchell, Editor of the LVRJ}, who argued whether judges should be appointed or elected, whether public financing of judicial races would be a viable alternative, and whether the judicial surveys co-sponsored by the Clark County Bar Association and the Review-Journal are a public service or open to manipulation.

Curtas, came down on the side of the Missouri plan started in 1940, where judges are appointed and then run for retention, giving voters a chance to oust them.

But District Judge-elect Jackie Glass, who unseated the only judicial incumbent to lose in the 2002 election, Judge Jeffrey Sobel, favored elections over appointments.

"I don't believe I'd have this opportunity through an appointment," she said. "I wasn't politically active. I didn't know people." She downplayed the role money played in her victory, crediting grass-roots campaigning and hard work.

However, she also used $150,000 of her own money to pay for a massive television ad campaign.

Law school professor Jeffrey Stempel argued that appointments are better, but said there are "too many entrenced folks who don't want to make it happen." He cited the political consultants and the television stations that benefit from the judicial ads as advocates for status quo.

Public financing of judicial races will not happen in Nevada, UNLV political science professor Michael Bowers concluded. Wisconsin, the first state to use public financing to provide money for judges to campaign, has been a failure because people aren't

checking a box on the their state income tax forms to send $1 to judges, so the pot to finance the races is about half what is needed.

"Elections do little to hold judges accountable," Bowers said, outlining his reasoning to support appointments.

Nevada Supreme Court Justice Nancy Becker said one way to limit the fund-raising demands for judges is to have a three week filing period for judges in the January before the election. By law, judges cannot start raising money until January, and if they don't draw opponents at the end of the filing, she said incumbent judges shouldn't be able to raise money afterward.

Currently, they begin raising money in January and don't find out until May whether they have an opponent, leading them to raise huge sums to be prepared in case they draw a challenger.

The forum panelist also discussed the judicial surveys that are released every two years and included anonymous evaluations of judges by attorneys who practice in their courts.

Family Court Judge Cynthia Dianne Steel blasted the surveys as unreliable because the evaluations are anonymous and "people know now how to maneuver it."

"Why is the Clark County Bar Association sanctioning them when in many cases it demeans judges?" Steel asked.

Bar Association President Cam Ferenbach said in the 20 years he's been practicing law, there is a "world of difference" in how judges treated attorneys in his first 10 years, when there were no surveys, and in the past 10 years, where there have been five surveys. Now there is some accountability and, Farenebach said, "Its made a big difference in how

judges treat attorneys." "

In an article entitled: **Professionalism and Public Perception.** appearing in the **Nevada Lawyer** dated December 1999, on pages 13-16 present President-Elect of the State Bar of Nevada N. Patrick Flanagan, states on page 12:

> "... The Committee recommended that the State Bar implement three strategies to address the image of the legal profession in Nevada. First, the **State Bar should emphasize adherence to the highest standards of professional conduct and redouble its efforts to improve the quality and conduct of the Bench** and Bar in Nevada. ..." (Emphasis added.)

The present composition of the Nevada judiciary, as largely determined by the present method of selecting judges places the citizens of the United States in a position where they are not likely to receive, from the Nevada judiciary, their [the citizens'] rights to due process and equal protection as set out in §1 of the 14th Amendment to the United States Constitution.

Further, while Petitioner is not able to provide evidence that bribes were paid to cause the Nevada Supreme Court to issue and then refuse to correct its uncontestedly fraudulent orders, the trust that has been stolen from Petitioner and his brother certainly contained enough money to allow for large payments of bribes as Petitioner has stated under oath:

> "I do not know the exact value of the Sibley trust or everything which is or was in it because I have been unlawfully denied discovery of this information. [Opening Brief at 25-27; Reply Brief to Charles Johnson at 17; Reply Brief to David Johnson at 28] However, one document dated 8/1/95 which I have received

from the Sibley Trust file maintained by David Johnson, indicates that the Sibley trust had a value in 1995 of $3,175,000.00. Not listed on this sheet are my mother's antiques, the Lexus which was the family car when Mr. Sibley died in 1997, my mother's large jewelry collection, and other furniture and personal effects. It is very possible that other assets were not listed as well.

Now, nearly eight years later in 2003, I can pretty accurately estimate that with appreciation, interest, accumulated earnings, on the total trust, which includes, previously very successful, going businesses, and the articles not mentioned in the 1995 document, the total trust is now worth **well in excess of** $5,000,000.00." (April 4, 2003 Affidavit of James Wray, App., infra, 113a-116a, quote on 114a-115a)

The Nevada Supreme Court has broken the promise of neutrality when it alters the facts and hands out decisions based upon who the litigants are, thereby denying citizens who appear before it the protections of **Section 1 of the 14th Amendment to the United States Constitution** that:

> "... No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; **nor shall any State deprive any person of** life, liberty, or **property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**" (Emphasis added.)

As has been shown, supra, in the statement of facts, it is undisputed that the Nevada Supreme Court has grievously misstated the facts in Petitioner's and his brother's case and dismissed that case based upon the grossly misstated facts in that court's December 17, 2002 Order of Affirmance (App., infra, 4a-10a). Further, Petitioner told the Nevada Supreme

Court of the misstatements of facts in his Petition for Rehearing (App., infra, 15a-34a). But, the Nevada Supreme Court Denied Rehearing, even after being fully alerted to the grossly misstated facts. (App., infra, 10a-11a). Finally, Petitioner again told the Nevada Supreme Court of the grossly misstated facts in his Motion that the Court correct its fraudulent orders (App., infra, 35a-54a). Even though the respondents did not dispute that the Court had grossly misstated the facts in their Oppositions (App., infra, 55a-58a and 59a-65a), the Nevada Supreme Court, **without disputing that its facts were wrong**, denied the Motion to correct its fraudulent facts. (App., infra, 12a-14a). Petitioner and his brother have thus been denied due process and equal protection as guaranteed by **Section 1 of the 14th Amendment to the United States Constitution.**

The United States Supreme Court should ensure that due process and equal protection of the laws are indeed provided by State Court systems for U.S. citizens who must appear before them. Therefore, the United States Supreme Court should emphatically state that when a highest court in a state,

1) Mistakes the facts in a case;

2) Then, has been clearly appraised of its misstatements;

3) Even the opposing parties do not refute that the court has misstated the facts; and,

4) Even then, such court refuses to alter those misstatements,

Such highest state court has violated due process and equal protection rights as guaranteed by the Section 1 of the 14th Amendment to the United States Constitution and any resulting judgment is for that reason void.

We have been instructed:

"... [T]here are two major exceptions to the rule against reconsideration of findings of fact. **The Supreme Court will review a state court's findings "where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it;** ..." *Fiske v. Kansas*, 274 U.S. 380, 385-86 (1927). And see *Creswill v. Knight of Pythias*, 225 U.S. 246, 261 (1912); *Sterling v. Constantin*, 287 U.S. 378, 398 (1932)." **Supreme Court Practice**, 8th Ed. (2002) at page 251. (Emphasis added.)

As has been demonstrated earlier in this argument, the Nevada Supreme Court has corruptly fabricated incorrect facts and dismissed Petitioner's and his brother's case based upon the fraudulent facts. This is a violation of due process and equal protection rights as guaranteed by the Section 1 of the 14th Amendment to the United States Constitution.

2. THE UNITED STATE SUPREME COURT SHOULD RECOGNIZE AN EXCEPTION TO ABSOLUTE JUDICIAL IMMUNITY FROM SUITS FOR DAMAGES WHERE IT IS UNDISPUTED THAT JUSTICES OF A STATES HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO ALTER THE INDISPUTABLY FRAUDULENT FACTS.

The United States Supreme Court has stated in Forester v. White, 484 U.S. 219, 226, 227, 230, 108 S.Ct. 538, 544, 545, 546, 98 L.Ed.2d 555 (1988):

"The purposes served by judicial immunity from liability in damages have been variously described. In *Bradley v. Fischer, supra*, at 348, and again in *Pierson v. Ray, supra*, at 554, the Court emphasized

that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have. ... If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous, but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. ... The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. **Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review**, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. ...

... **Absolute immunity, however, is "strong medicine, justified only when the danger of [officials' being] deflected from the effective performance of their duties is very great.**" 792 F.2d, at 660 (Posner, J. dissenting). The danger here is not great enough. ...

... We conclude that Judge White was not entitled to absolute immunity for his decision to demote and discharge Forester. ..." (Emphasis added.)

The Nevada Supreme Court has not merely erred in making a decision, rather, it has intentionally grossly

misstated the facts in Petitioner's case and then thrown that case out on statute of limitation grounds, based upon the grossly incorrect facts. (Please see the Order of Affirmance filed December 17, 2002, App., infra 4a - 9a.). Further, the Nevada Supreme Court has been fully and clearly alerted to its misstatements of the facts. (Please see the Petition for Rehearing filed December 31, 2002, App., infra 15a - 34a. Also see the Motion that the Nevada Supreme Court correct its fraudulent Orders ..., App., infra 35a - 54a.). Yet, the Nevada Supreme Court has refused to alter its incorrect facts , even though the Respondents, below, have failed to argue in support of the Nevada Supreme Court's fraudulent facts. (Please see the Oppositions filed by David and Charles Johnson, respectively, App., infra, 55a - 58a and 59a - 65a.). Indeed, in is final Order Denying Motions filed March 21, 2003 (App., infra, 12a - 14a), even the Nevada Supreme Court failed to demonstrate that any of the fraudulent facts it relied on are correct.

Under such circumstances, allowing the justices to protect themselves with absolute immunity from suits for damages is not only not justified, but also, encourages persons having criminal intent to seek judicial office. Since, such dishonest persons will realize that as judge they will be free of any civil repercussion of their fraudulent acts and if they are powerful and stick together, they are also very unlikely to suffer any censure or criminal prosecution for their fraudulent acts. Thus, in these circumstances, absolute judicial immunity encourages the rule of the mob and not the law and results in denial of due process and denial of equal protection to citizens of the United States who appear before dishonest courts such as the Nevada Supreme Court.

Finally, when the highest court in a state is peopled by such a mob of justices, there is no option for correction of their fraudulent judgments, except, by writ of certiorari to the over-

worked United States Supreme Court which only grants a very small number of writs of certiorari and indeed we are instructed on page 136 of **Supreme Court Practice**, 8th Edition:

> "The jurisdiction of the Supreme Court to review decisions of the state courts is presently codified in 28 U.S.C. §1257(a). It is the direct descendant of Section 25 of the Judiciary Act of 1789. Various amendments to this statute have been made from time to time, the most recent being the Act of June 27, 1988. 102 Stat. 662. That Act abolished the last remnant of the "appeal" path, a path that formerly led to mandated Supreme Court review of many final state court judgments that involved federal issues. Now all those who seek such review must follow the "certiorari" path, **the path that leads to review of only those relatively few cases that the Court–in its discretion–wishes to hear and decide on the merits.** ..." (Emphasis added.)

Thus, Petitioner suggests that under such circumstances when:

1) The facts stated are incorrect;

2) The court is told of that the facts are not only incorrect, but are indeed fraudulent; and,

3) The opposing party does not even argue that the facts stated are correct; and,

4) A state's highest court, without disputing that it has grossly misstated the facts, refusing to correct its fraud,

the justices of such a court should no longer be protected by the common law doctrine of absolute judicial immunity and should be subject to suits for damages.

The egregious nature in which the highest court has handled the case present an excellent venue for the United States Supreme Court to rethink the concept of "absolute

judicial immunity." Please see **Judicial Immunity from Civil and Criminal Liability, 27 San Diego Law Review** 1 (1990) where on page 28 the author states:

> "It is said that this grant of absolute immunity for judges is necessary to maintain judicial independence and to protect judges from harassment by disgruntled litigants. Surely these are admirable goals, but whether absolute immunity, as distinct from qualified immunity, is truly necessary to effectuate them is an open question. **A grant of immunity for intentional and malicious civil wrongs has not been found to be necessary in the executive branch of government.** Judicial independence should be scrupulously guarded and some degree of immunity from civil liability must be maintained for judges. **But absolute judicial immunity from civil liability remains a debatable practice.**" (Emphasis added.)

As discussed immediately below, the United States Supreme Court should rule that such actions are properly in the jurisdiction of the federal courts pursuant to 42 U.S.C. §1983.

3. IF THE UNITED STATES SUPREME COURT RECOGNIZES AN EXCEPTION TO ABSOLUTE JUDICIAL IMMUNITY FROM SUITS FOR DAMAGES WHERE JUSTICES OF A STATE'S HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO ALTER THE INDISPUTABLY FRAUDULENT FACTS, THERE IS NO MEANINGFUL REMEDY UNLESS PERSONS HARMED CAN SUE IN THE

FEDERAL SYSTEM PURSUANT TO 42 USCS § 1983.

> "Under the language of 42 USCS § 1983, ... "[e]very person" who brings about the deprivation of the federal constitutional or statutory rights of another under color of state law is liable to the party injured. Notwithstanding such inclusive language, it has been expressly held or recognized by the Supreme Court ... that the rule under which a judge is immune from liability for damages is applicable in suits brought against a judge under § 1983.
>
> In Pierson v. Ray (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213, the court held that the settled principle of law that judges were immunized from liability for damages for acts committed within their judicial jurisdiction was not abolished by the enactment of 42 USCS § 1983. ..." **Supreme Court's Views As to Judges Liability for Damages**, 116 L.Ed. 947, 954.

Appellant requests that where the highest court in a state dismissed a case based upon fraudulent facts and refused to correct the fraud after being requested to alter the indisputably fraudulent facts, a suit for damages should be allowed in federal court under 42 U.S.C. § 1983, because otherwise citizens thereby denied their constitutional rights will have no meaningful remedy and otherwise:

> "... there would be no federal remedy for a violation of federal rights whenever the violators so far succeeded in corrupting the state judicial process a to obtain a favorable judgment, ... This result would be inconsistent with cases in which, for example, police officers are sued under 42 U.S.C. § 1983 for having fabricated evidence that resulted in the plaintiff's being convicted in state court. Nesses v. Shepard, 68 F.3d

1003, 1005 (7th Cir. 1995)

4. IF THE SUPREME COURT ALLOWS 42 USCS 1983 CASES TO BE BROUGHT WHERE JUSTICES OF A STATE'S HIGHEST COURT HAVE FABRICATED FRAUDULENT FACTS AND DISMISSED A CASE BASED UPON THOSE FRAUDULENT FACTS AND REFUSED TO CORRECT THE FRAUD AFTER BEING REQUESTED TO ALTER THE INDISPUTABLY FRAUDULENT FACTS, THE SUPREME COURT SHOULD ALSO ALLOW THAT THE FRAUDULENT JUDGMENTS RESULTING FROM SUCH MISCONDUCT CAN BE NOT ONLY EXAMINED AS EVIDENCE, BUT RULED VOID BY FEDERAL COURTS PRESIDING OVER SUCH 42 USCS 1983 CASES.

We have been instructed:

> "The Court in more recent times has proclaimed that its jurisdiction over "final" decisions of state courts, as now embodied in 28 U.S.C. § 1257(a), is exclusive in nature ... [under the *Rooker-Feldman* doctrine] ... , **thus barring lower federal courts from reviewing final state court decisions dealing with federal issues."** **Supreme Court Practice**, 8th Edition (2002) at page 129-130. (Emphasis added.)

However, the US Supreme Court only accepts a very few of the cases submitted to it. (**Supreme Court Practice**, 8th Edition (2002) at page 136) Thus, unless the United State Supreme Court allows the federal courts, as part of a 42 U.S.C.S. § 1983 action, to pass upon the validity of fraudulent judgments issued by corrupt judges, there will be no review or correction of the vast majority of such fraudulent judgments. Thus, Petitioner requests that the United States Supreme Court:

1) Specifically recognize an exception to the *Rooker-*

Feldman doctrine when a 42 U.S.C.S § 1983 action has been brought against justices of a state's highest court who have fabricated fraudulent facts and dismissed a case based upon those fraudulent facts and refused to correct the fraud after being requested to alter the indisputably fraudulent fact;

2) Specifically allow not only a suit for damages against such corrupt judges, but also allow the federal courts to review and overturn the resulting fraudulent judgments of such judges.

CONCLUSION

The petition for writ of certiorari should be granted

Respectively submitted. Signed April 6th., 2003,

by: James Wray

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Appellant in Pro Per below

No.

In The Supreme Court of the United States

JAMES WRAY,
Petitioner,
v.
CHARLES JOHNSON, INDIVIDUALLY;
CHARLES JOHNSON AND/OR DAVID
JOHNSON TRUSTEE OF THE HOYT SIBLEY
AND MARY SIBLEY 1973 TRUST,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada

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APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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APPENDICES

		Page
A.	Order of Affirmance (Dec. 17, 2002)	4a
B.	Order Denying Rehearing (Feb. 20, 2003)	10a
C.	Order Denying Motions (Mar. 21, 2003)	12a
D.	Petition for Rehearing (Dec. 31, 2002) [1]	15a
E.	Motion that the Nevada Supreme Court Correct its fraudulent Orders of Dec. 17, 2002 and February 20, 2003 & That the Nevada Supreme Court Find Its Orders (As Now Incorrectly Written) Are In Violation of Section 1 of the 14th Amendment o to the United States Constitution. (Feb. 25, 2003)	35a
F.	Respondent David Johnson's Opposition to Motion That the Nevada Supreme Court Correct its Fraudulent Orders of December 17, 2002 and February 20, 2003, & That the Nevada Supreme Court Find its Order Are in Violation of Section 1 of the 14th Amendment to the United States Constitution (Mar. 3, 2003)	55a

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[1] The reformatting of items for this appendix has changed page numbering. Thus, when a reference in the Petition refers to a footnote on a particular page, the footnote number reference is correct, but the page number is no longer correct.

G. Respondent, Charles Johnson's Opposition to Appellant's "Motion That The Nevada Supreme Court Correct Its Fraudulent Orders of December 17, 2002 And February 20, 2003 & That The Nevada Supreme Court Find Its Order (As Now Incorrectly Written)are in Violation of Section 1 of The 14th Amendment to The United States Constitution" (Mar. 5, 2003) 59a

H. Motion For Stay of Remittitur Pending Application to The Supreme Court of The United States For a Writ of Certiorari & Motion For Permission to File a Reply to The Oppositions Filed by Respondents to Appellant's Motion That The Nevada Supreme Court Correct Its Fraudulent Orders ... (Mar. 10, 2003) 66a

I. **Las Vegas Review-Journal** Article: "JUDGING THE JUDGES" which appeared December 11, 2002 on page 5B. 108a

J. 42 U.S.C. § 1983 111a

K. 28 U.S.C. § 1257(a) 112a

L. Affidavit of James Wray dated April 4, 2003 113a

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant,	)	No. 34914
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	FILED DEC 17 2002 Janette M. Bloom Clerk of Supreme Court By s/J. Richards Chief Deputy Clerk
DAVID WRAY, Appellant,	)	No. 35027
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	

ORDER OF AFFIRMANCE

On July 26, 2002, this court granted appellants' petition for en banc reconsideration. This decision is issued in lieu of

our order of affirmance issued by the Southern Panel on December 12, 2001

In these consolidated appeals, appellants, James Wray and David Wray, appeal from a grant of summary judgment in favor of respondents, Charles Johnson and David Johnson. The district court's order dismissed the Wrays' legal malpractice and fraud claims against the Johnsons on statute of limitations grounds.

In 1973, Hoyt and Mary Sibley created a joint marital trust, drafted by respondent, Charles Johnson. Charles Johnson drafted several trust amendments for the Sibleys, most recently in 1991. The final amended trust granted the surviving spouse a special power of appointment over the decedent spouse's contribution to the trust. The survivor could exercise this special power of appointment inter vivos or through a testamentary document. The trust instrument contained no restrictions on the designation of beneficiaries pursuant to any exercise of the powers of appointment, except that the survivor could not appoint to himself. Mary then executed a will, also drafted by Charles Johnson, leaving all her property to the trust.

On July 28, 1991, Mary died. Hoyt promptly began using the power of appointment to make gifts of Mary's property to several people, including the Wrays, who were Mary's children from a prior marriage. Hoyt died in 1997, using the testamentary power of appointment to dispose of the remainder of Mary's property. Hoyt did not appoint any of this property to the Wrays.

In 1998, David and James Wray filed suit against respondents, Charles Johnson and the current trustee, David Johnson, alleging malpractice in drafting of Mary's estate plan. The Wrays asserted that Mary intended them to be beneficiaries under the trust, and that Charles Johnson committed malpractice in drafting of the powers of appointment without providing for them. The Wrays later amended their complaint to include a fraud claim against

Charles Johnson based on his pretrial deposition testimony.

In granting summary judgment, the district court ruled that NRS 11.207(1), the statute of limitation governing such matters, barred the Wrays' suit. The district court also found that the Wrays failed to allege or present evidence of fraud. James and David Wray timely filed separate appeals contesting this order, which have been consolidated.

We review de novo a district court's grant of summary judgment.[1] We view all evidence in the light most favorable to the party opposing summary judgment.[2] The party opposing summary judgment must present evidence creating a genuine issue of material fact, and may not rely on "'gossamer threads of whimsy, speculation, and conjecture.'"[3]

Statute of limitations for legal malpractice

The district court concluded that NRS 11.207(1), the legal malpractice statute of limitations, bars any such claim here. NRS 11.207(1) provides that a claim for legal malpractice must be brought within two years from the date the plaintiff discovered or should have discovered the injury, or four years from the date of injury, whichever occurs first.[4] A legal malpractice action does not accrue until the attorney's

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[1]Coury v. Robison, 115 Nev. 84, 88, 976 P.2d 518, 520 (1999) (citing Bulbman. Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).

[2]Mark Properties v. National Title Co., 117 Nev. ___, ___, 34 P.3d 587, 590 (2001).

[3]Kopicko v. Young, 114 Nev. 1333, 1336, 971 P.2d 789, 790-91 (1998) (quoting Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993)).

[4]The legislature amended NRS 11.207(1) in 1997. At the time of Mary's death in 1991, NRS 11.207(1) provided a four-year statutory period from the time when plaintiff suffered injury and discovers the material facts giving rise to the cause of action. As our result is the same under either version of the statute, we need not address which version applies.

negligence has cause damages.[5]

Hoyt received the power of appointment in 1991 and promptly began exercising it. The Wrays suffered injury, at the latest, when Hoyt began to appoint Mary's property. The evidence also shows that the Wrays received a copy of Mary's estate planning documents, along with a diagram explaining Hoyt's power to make gifts of Mary's property, shortly after her death. Thus, the Wrays were aware of all the relevant facts in 1991. The statute of limitations had, therefore, run prior to the Wray's 1998 complaint.

Fraud

A plaintiff in a civil fraud action must prove, among other things, justifiable reliance upon the defendant's misrepresentation.[6] The Wrays allege that Charles Johnson committed fraud by lying in a pretrial deposition. The Wrays presented no evidence that they relied upon the alleged misrepresentation. Accordingly, the district court correctly granted summary judgment to the Johnsons on this claim.

As these issues dispose of this case, it is unnecessary to reach the parties, remaining arguments. Therefore, we

ORDER the judgment of the district court AFFIRMED.[7]

s/Shearing, J.
Shearing

s/Agost, C.J.
Agosti

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[5]See Kopicko, 114 Nev. at 1337, 971 P.3d 791

[6]See Wohlers v. Bartgis, 114 Nev. 1249, 1260-61, 969 P.2d 949, 957-58 (1998).

[7]The Honorable Cliff Young, Chief Justice, voluntarily recused himself from participating in the decision of this matter.

s/Leavitt _____, J.
Leavitt

s/Becker _____, J.
Becker

cc: Hon. Allan R. Earl, District Judge
James H. Wray 111
David Wray
Edwards, Hale, Sturman, Atkins & Cushing, Ltd.
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk

MAUPIN, J., with whom ROSE, J. agrees, concurring in part and dissenting in part:

It is evident that the Wrays were aware of the facts that place them on notice that the final estate plan drawn by Charles and David Johnson might result in their not receiving the bulk of the assets that comprised their mother's estate. However, the limitation period governing legal malpractice did not start to run until the Wrays sustained legal damages.[1] That did not occur until the exercise of Hoyt Sibley's power of appointment became legally effective in 1997.

I agree that the fraud claim was properly dismissed as stated by the majority.

s/Maupin, J.
Maupin

I concur.

s/Rose, J.
Rose

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[1]See Kopicko v. Young, 114 Nev. 1333, 1336, 971 P.2d 789, 791 (1998).

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant,	)	No. 34914
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	FILED FEB 20 2003 Janette M. Bloom Clerk of Supreme Court By s/J. Richards Chief Deputy Clerk
DAVID WRAY, Appellant,	)	No. 35027
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.[1]

s/Agost, C.J.
Agosti

s/Shearing, J.
Shearing

s/Rose, J.
Rose

s/Leavitt, J.
Leavitt

s/Becker, J.
Becker

s/Maupin, J.
Maupin

cc: Hon. Allan R. Earl, District Judge
James H. Wray 111
David Wray
Edwards, Hale, Sturman, Atkins & Cushing, Ltd.
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk

[1]The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant,	)	No. 34914
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	FILED Mar 21 2003 Janette M. Bloom Clerk of Supreme Court By s/J. Richards Chief Deputy Clerk
DAVID WRAY, Appellant,	)	No. 35027)
vs.	)	
CHARLES JOHNSON, INDIVIDUALLY; AND CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	

ORDER DENYING MOTIONS

On December 12, 2001, a three-judge panel of this court entered an Order of Affirmance in these consolidated appeals.

Appellants filed a petition for rehearing of that order and the petition for rehearing was denied on April 3, 2002. Thereafter, appellants filed a petition for en banc reconsideration. En banc reconsideration was granted on July 26, 2002, and on December 17, 2002, the en banc court entered a new Order of Affirmance in these consolidated appeals. Appellants filed a petition for en banc rehearing and rehearing was denied on February 20, 2003.

On February 25, 2003, appellant James Wray filed a "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003. & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution." In this motion Mr. Wray raises what he claims are 6 falsehoods that are contained in the court's December 17, 2002, and February 20, 2003, orders. Respondents oppose the motion. Additionally, respondent Charles Johnson requests this court to award him attorney's fees and costs for having to answer 'frivolous Motions, Petitions, Petitions for Rehearing, and Petitions for Reconsideration." On March 10, 2003, Mr. Wray filed a motion requesting leave to file a reply to respondents' oppositions. No good cause appearing we deny the motion to file a reply.

Mr. Wray appears to be asking this court to again rehear these consolidated appeals. Because this court has already considered and denied appellants' petition for en banc rehearing, we deny Mr. Wray's motion. Further, we conclude that the imposition of sanctions is not warranted at this time and we deny Mr. Johnson's request.

On March 10, 2003, Mr. Wray filed a motion requesting this court to stay issuance of the remittitur pending his application to the Supreme Court of the United States for writ of certiorari. See NRAP 41(b). No good cause appearing, we deny the motion.

Because appellants have exhausted all available remedies in these consolidated appeals, the parties shall be prohibited from filing any additional documents in these consolidated appeals. The clerk of this court shall return, unfiled, any further documents that may be submitted in these consolidated appeals.

It is so ORDERED.[1]

s/Agost, C.J.
Agosti

s/Shearing, J.
Shearing

s/Rose, J.
Rose

s/Leavitt, J.
Leavitt

s/Becker, J.
Becker

s/Maupin, J.
Maupin

cc: Hon. Allan R. Earl, District Judge
James H. Wray, 111
David Wray
Edwards, Hale, Sturman, Atkins & Cushing, Ltd.
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Clark County Clerk

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[1]The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY,	)	
	)	No. 34914
Appellant,	)	
	)	
vs.	)	
	)	FILED
CHARLES JOHNSON,	)	DEC 31, 2002
INDIVIDUALLY;	)	BY
CHARLES JOHNSON	)	Janette M. Bloom
AND/OR DAVID	)	Clerk of Supreme
JOHNSON TRUSTEE OF	)	Court
THE HOYT SIBLEY,	)	Deputy Clerk
AND MARY SIBLEY	)	
1973 TRUST	)	
Respondents.	)	
	)	
DAVID WRAY,	)	
	)	No. 35027
Appellant,	)	
	)	
vs.	)	
	)	
CHARLES JOHNSON,	)	
INDIVIDUALLY;	)	
CHARLES JOHNSON	)	
AND/OR DAVID	)	
JOHNSON TRUSTEE OF	)	
THE HOYT SIBLEY,	)	
AND MARY SIBLEY	)	
1973 TRUST	)	
Respondents.	)	
	)	

PETITION FOR REHEARING AS A RESULT OF THE EN

BANC ORDER OF AFFIRMANCE FILED DECEMBER 17, 2002

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XIX, THE HONORABLE GARY L. REDMON

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MARY SIBLEY 1973 TRUST

Pursuant to NRAP 40, Appellant, James Wray, hereby requests a rehearing as a result of the En Banc Order of Affirmance filed December 17, 2002.

OUTLINE OF THE MOST MAJOR factual Falsehoods IN THE ORDER

The Supreme Court Order is based upon **SIX (6) MAJOR factual Falsehoods**.

Falsehood #1: Appellants sued Charles Johnson for errors in drafting the trust. **The truth is:**

A) Paragraph 14 in both the Complaint and Amended Complaint reads:

> "14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)

B) Charles Johnson testified, after consulting with his attorney, regarding the affirmative defense of statute of limitations:

> "A. **As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place**, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

> " ...;
>
> **b) Breach of his duty to [should read "of"] loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what had become a conflict of interest, as he aided Hoyt**

> **Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where** [should read "were"] **completely denied their inheritance;** ..." (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8.)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000 unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6.)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.** (Please see footnote #4 on page 6.) After Mary's death, Hoyt was restricted **by the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [1]

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[1] Neither DAVID JOHNSON nor CHARLES JOHNSON **even** mentioned or commented upon **anything said in** the following quote from page 8 of Appellant's Opening Brief:

> **"Since, Defendant/Respondent, CHARLES JOHNSON has admitted in his deposition at page 54:**
>
> **"Q. So any action that Mr. Sibley took after his wife passed on would be based upon the special power of appointment that existed in this document?**
>
> **A. Right, ... It would come under the special power."** (Emphasis added.) (2 J.A. 408.) **AND:**
>
> **1. Pursuant to the language in the Special Power, the Special Power only applies to the Decedent's (Mary Sibley's) trust** (2 J.A. 427.) **and;**

2. CHARLES JOHNSON has also admitted that:

i) The only viable General Power was the General Power found in trust provision 3.3 (2 J.A. 407.) **and;**

ii) All the Sibleys' assets were community property (2 J.A. 407) [SHOULD READ: (2 J.A. 398).]; **and,**

3. By its terms, the General Power in 3.3 "... shall be exercised jointly with respect to community property" (2 J.A. 425.)

THEREFORE, after the death of Mary Sibley, Hoyt Sibley was forbidden to appoint the assets in the Survivor's (Hoyt Sibley's) trust away from Plaintiffs/Appellants, JAMES and DAVID WRAY."

In order to qualify the survivor to receive a marital deduction, the survivor could have received the survivor's trust outright as his own property, but he had to receive at least a **pseudo**-general power of appointment over the assets in the survivor's trust. Mr. and Mrs. Sibley agreed to leave the survivor only a **pseudo**-general power. In the Sibley Trust, B.23 was that **pseudo**-general power. B.23 was only a "**pseudo**" power and could not actually be used because pursuant to B.19 trust provisions in the body of the trust controlled over conflicting provisions in the General Provisions and B.23 was in the General Provisions and Trust Provision 3.3, which was in the body of the trust, mandated **only joint exercise** of any **"... power to appoint or direct distributions from ..."** the community property. Charles Johnson has testified that all the Sibley property was community. Pursuant to In Re Tatkow, 363-N.Y.S.2d 720 (1975) the IRS will allow a marital deduction even though a **pseudo**-general power is not actually usable due to a contract between the parties. (Please see the Reply Brief to David Johnson at pages 4 -7 and also the Reply to Charles Johnson at pages 5-11.)

It was explained on page 8 of the Reply to David Johnson, that: "Such a prohibition precluding Hoyt Sibley from appointing the assets in his **survivor's** trust away from Plaintiffs/Appellants is consistent with a finding of a contract between Mary and Hoyt Sibley that after the death of both of them, their trust estate would be left primarily to her children as was provided in the last amendment the Sibleys signed together on May 2, 1991. (2 J.A. 455-456 & Addendum to the Opening Brief at I-III.) **Further, the** [intentionally void] **Special Power is completely consistent with a finding of a such a contract, when the Special Power is properly interpreted** [as only valid as a tax and creditor avoidance feature] **as is explained in Arguments #s 3 and 4 of Appellant's Opening Brief."**

C) Pursuant to identical **Sibley wills provisions 4.3**, the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death**. ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on page 5.)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in 1991. **The truth is:**

A) Although Mr. Sibley with the help of Charles Johnson's firm did prepare six [6] amendments from 1992 - 1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley (December 20, 1997).** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2); because the special power is void (ft.nt. #4 & ft.nt. #5); and because Hoyt could not **alone** appoint or direct distributions from the survivor's trust (ft.nt.#1), **etc**.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

> **"... the trust is still intact, as I understand it.**
>
> **...**
>
> **And the assets are still in the trust. ..."** (2 J.A. 397)
>
> **"Q. <u>It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.</u>**
>
> **A. That's right.**
>
> **MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any."** (2 J.A.. 404) (Emphasis added.)

(Please see footnote #9 on page 8.)

<u>Falsehood #4:</u> Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary Sibley died. **<u>The truth is:</u>** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **<u>In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.</u>** All six of **those times are accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died.** (Please see footnote #6 on page 7 where this truth is elaborated upon.)

<u>Falsehood #5:</u> David Johnson has been sued for malpractice and fraud. **<u>The truth is:</u>** David Johnson has been sued **<u>only for restitution and an accounting</u>** and in his Answering Brief at pages 24-25, David Johnson states:

> "Wray's claim in this litigation is for legal malpractice against Charles Johnson ...
>
> ...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8.)

Falsehood #6: Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their **justifiable reliance that Charles Johnson,** as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust.** Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10.)

THE ORDER AND THE ERRORS IN IT IN DETAIL

The December 17, 2002 Order reads:

> "... The district court's order dismissed the Wrays' legal malpractice and fraud [2] claims against the Johnsons on statute of limitations grounds.
>
> ...Charles Johnson drafted several trust amendments for the Sibleys, most recently in 1991. [3]

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[2] "... DAVID JOHNSON, AS TRUSTEE, is [**only**] being sued ... for restitution, etc. and for an accounting. (1 J.A. 1-6 & 6 J.A. 1295-1305)" [Opening Brief at page 5.] (See also pages 31-33 of Appellant's Reply Brief to David Johnson.) In his Answering Brief at pages 24-25, David Johnson states:

> "Wray's claim in this litigation is for legal malpractice against Charles Johnson ...
>
> ...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Therefore the action against David Johnson isn't even subject to the legal malpractice statute of limitations.

[3] There were trust amendments after the 1991 amendment. Respondents rely on 6 "TRUST AMENDMENT(s)" dated from 1992 -1997 which were drafted by the Charles Johnson firm and signed by Hoyt Sibley, **alone**. (Answering Brief of David Johnson at page 7 citing to 1 J.A. 175-

The final amended trust granted the surviving spouse a special power of appointment over the decedent spouse's contributions to the trust. [4] The survivor could exercise this special power inter vivos or

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184.) The May 2, 1991 Trust Amendment was the **final valid** trust amendment, as it was signed by **both** Mr. and Mrs. Sibley. Pursuant to the 1991 Amendment, Appellants received practically the entire estate. (Pages 7 -9 of the Opening Brief.) "... After Mary Sibley died, Defendant/Respondent, CHARLES JOHNSON, helped Hoyt Sibley **amend** the trust to totally disinherit her children: ... JAMES and DAVID WRAY. ..." [Opening brief at page 5. Emphasis added.] **One** reason these later amendments were **invalid** is that pursuant to identical Sibley wills provisions 4.3 [2 J.A. 446 and 2 J.A. 451] the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death**. ..." (Pages 8-10 of the Reply Brief to David Johnson.. The quoted portion is on page 10.) Mary Sibley died July 28, 1991. (Opening Brief at page 25 citing to 2 J.A. 459)

[4] Pursuant to Trust Provision B.28 found at 2 J.A. 441-442, **the decedent's trust was composed of $600,000** because that was the maximum amount she could shelter from taxation when she died in 1991. **It did not consist of her "contributions to the trust"** which would have been her **one half interest in the estate**. Confirming this interpretation, Trust & Estate Expert, Mark Solomon, explained to the district court:

"At the time, it provided - - both when it was originally drafted in 1973 and again when amended in toto in 1986 - -it's - - the trust splits into two parts on the death of the first spouse.

The first part, called the credit shelter trust - - or the decedent's trust in this case is the way they labeled it - - takes the $600,000 unified credit amount that was then available under federal law and sticks it into what becomes for the first time an irrevocable subtrust of the larger trust.

The second part - - everything over $600,000, your Honor, goes into a second subtrust called a survivor's trust, and the survivor's trust in this case, **assuming that we had about a 1.5 million - dollar estate, would be about $900,000. In the decedent's trust, it was about $600,000.** ..." (5 J.A. 1030) (Emphasis added.) [The actual value of the trust is not known to Appellants, as they have been improperly denied such discovery. *(See the Opening Brief at 25-27; the Reply to Charles Johnson at 17; and the Reply to David Johnson at 28)]*

through a testamentary document. The trust instrument contained no restriction on the designation of beneficiaries pursuant to any exercise of the powers of appointment, except that the survivor could not appoint to himself. [5] ...

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[5] Properly interpreted, **as a matter of law**, the "Special Power", itself, was void as a Power of Appointment, pursuant to the many authorities found in the Opening Brief in **Argument #3** at pages 13 through 18, because it did not create a certain class of persons **designated by the donor** who could be benefitted, therefore it (the "Special Power") was too uncertain and indefinite. **None of these many authorities mentioned in argument #3 were even cited by either Respondent in their respective Answering Briefs**. While he did not even cite, any of the above mentioned authorities, Respondent, David Johnson, did attempt misleading arguments based upon the First and Second Restatements of Property. However, Appellant has refuted all of these arguments and shown that indeed the "Special Power" is also void under the Restatements. [Please see the first part of Argument #3 (at pages 17 -21) in the Reply Brief to David Johnson.]

The void Special Power found as trust provision paragraph 4.5 reads:

> "4.5 Special Power of Appointment: The surviving spouse shall also have, with regard to the principal of the Decedent's Trust, the **power to appoint** said Trust, or any part thereof, either during life or by Will, **to one or more persons or entities; provided, that this power may not be exercised to any extent in favor of the surviving spouse, the creditors of the surviving spouse, or the estate or creditors of the estate of the surviving spouse**." (2J.A. 427.) (Emphasis by bolding, enlarging & underlining added.)

Comment d to § 320 of the First Restatement of Property, which is quoted on page 18 of the Reply Brief to David Johnson, provides: "... **Powers to appoint to ... any person except the donee or his estate, ... are examples of group descriptions too broad to create a special power as here defined**. ..." Thus, the 4.5 Special Power in the Sibley Trust is void as it "appears" to grant the survivor power to appoint to any person except the surviving spouse, the estate of the surviving spouse or the creditors of the surviving spouse which is "too broad to create a special power."

The void "Special Power" was intended by the testators to be a tax and creditor avoidance feature intended to prevent the IRS from ruling that the surviving spouse had the equivalent of a general power over the $600,000 unified credit amount that was put in the decedent's trust.

On July 28, 1991 Mary died. Hoyt promptly began using the power of appointment to make gifts of Mary's property to several people including the Wrays, [6] ... Hoyt died in 1997, using the testamentary power of appointment to dispose of the remainder of Mary's property. [7] Hoyt did not appoint any of this

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Because, if there was such a ruling, the estate would have been taxed on the $600,000. (Please see pages 18-20 of the Opening Brief, pages 26 and 27 of the Reply Brief to David Johnson, and page 15 of the Reply Brief to Charles Johnson..)

Mary Sibley was an accomplished legal secretary who realized that the "Special Power" was void, except for its tax and creditor avoidance features, because it **intentionally** did not contain a certain class designated by her to be benefitted. (Opening Brief at pages 20-22, Reply to Charles Johnson at pages 15-16, Reply to David Johnson at page 27.)

[6] Please read footnote #9, also here.

There is absolutely no evidence in the Joint Appendix that demonstrates that Hoyt Sibley used the "special power" or any formal trust method, or involved the Sibleys' attorney, Charles Johnson when he [Hoyt] made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death. All six of those times are accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died.**

Because, at the time of Mary's death, except for certain relatively minor specifically agreed upon bequests whose value was firmly set, the entire estate was going to become the property of Appellants after the death of Hoyt Sibley, there was no one damaged by his failure to follow some trust formality like appointing or making an amendment to the trust when he gifted property to Appellants. If all the major parties, Hoyt Sibley and Appellants, were content with something that was done, any deviation from trust formalities was, in retrospect, allowable as a novation of the original agreement between Mary and Hoyt Sibley. But, there is no evidence in the Joint Appendix that there was any such discussion between Mr. Sibley and Appellants regarding trust formalities. [See the Joint Appendix.]

[7] As shown in footnote #5, the special power is void, and thus, so is the derived "testamentary power".

The tax purpose, **intentionally void** special power only pertained to the $600,000 unified credit amount, it did not cover all of Mary's property. Some of Mary's share of trust property went into what was called

property to the Wrays.

In 1998, David and James Wray filed suit against respondents, Charles Johnson and the current trustee, David Johnson, alleging legal malpractice in drafting Mary's estate plan. The Wrays asserted that Mary intended them to be beneficiaries under the trust, and that Charles Johnson committed malpractice in drafting the powers of appointment without providing for them. [8] ...

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the survivor's trust (See footnote #4, supra.) and, by the terms in the Sibley trust, Hoyt Sibley was specifically forbidden to appoint or direct any of the assets in the survivor's trust without the agreement of Mary Sibley. (Please see footnote #1, supra.)

[8]

THE MALPRACTICE SUIT AGAINST CHARLES JOHNSON

Paragraph 14 of both the Complaint and Amended Complaint read:

> "14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)

At the time of his deposition, February 26, 1999, **Charles Johnson and his attorney certainly understood that the complaint against Charles Johnson was then a general negligence complaint** and that he was **not being charged with just a drafting defect, as in his deposition, after consulting with his attorney, Charles Johnson testified:**

"As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting at 2 J.A. 396.) (Emphasis added.)

As developed by the litigation, the suit against Charles Johnson included, but was not limited to:"...;

b) Breach of his duty to [should read "of"] **loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where** [should read "were"] **completely denied their**

Stature of limitations for legal malpractice

The district court concluded that NRS 11.207(1), the legal malpractice statute of limitations, bars any such claim here. NRS 11.207(1) provides that a claim for legal malpractice must be brought within two years from the date the plaintiff discovered or should have discovered the injury, or four years from the date of injury, whichever occurs first. (In its footnote #4 placed here the Supreme Court Order reads: "The Legislature amended NRS 11.207(1) in 1997. At the time of Mary's death in 1991, NRS 11.207(1) provided a four-year statutory period from the time when **the plaintiff suffers injury and discovers the material facts giving rise to the cause of action.** As our result

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inheritance;

c) Failure to advise Hoyt Sibley of his obligations to Mary Sibley and to her children, ... James and David Wray, with the result being that James and David Wray were completely denied the inheritance that Mary and Hoyt Sibley had agreed would go to them after Hoyt Sibley's death." (Emphasis added.) [See footnote #9 found on page 32 Opening Brief, citing to 7 J.A. 1502]. **[See, also, the Reply Brief to David Johnson at pages 2 & 3.]**

THE SUIT AGAINST DAVID JOHNSON, AS TRUSTEE, FOR AN ACCOUNTING AND RESTITUTION

"... DAVID JOHNSON, AS TRUSTEE, is [**only**] being sued ... for restitution, etc. and for an accounting. (1 J.A. 1-6 & 6 J.A. 1295-1305)" [Opening Brief at page 5.] (See also pages 31-33 of Appellant's Reply Brief to David Johnson.) In his Answering Brief at pages 24-25, David Johnson states:

> "Wray's claim in this litigation is for legal malpractice against Charles Johnson ...
> ...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

So, the claim against David Johnson is not subject to the legal malpractice statute of limitation. Appellants did not know anyone but Appellants were to be successor trustees until December 22, 1997. (Please see the Affidavit of James Wray found at 7 J.A. 1560-1563 and the May 2, 1991 Amendment at 2 J.A. 455-456.)

is the same under either version of the statute, we need not address which version applies.") A legal malpractice action does not accrue until the attorney's negligence has caused damages.

Hoyt received the power of appointment in 1991 and promptly began exercising it. The Wrays suffered injury, at the latest, when Hoyt began to appoint Mary's property. [9] The evidence also shows that the Wrays received a copy of Mary's estate

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[9] Please read footnote #6, again here.

Although Mr. Sibley with the help of Charles Johnson's firm did prepare amendments from 1992 -1997 which gifted property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note especially paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley which occurred December 20, 1997.** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments are invalid because of Mary Sibley's will provision 4.3 (ft.nt #2); because special power 4.5 is void (ft.nt. #4 & ft.nt. #5); and because Hoyt could not alone appoint or direct the survivor's trust (ft.nt.#1), **etc.**

Except for the 1992-1997 amendments there is absolutely no evidence in the Joint Appendix of any gift from the trust from Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

The Joint Appendix contains absolutely no evidence that Appellants had knowledge of any gifts of trust property to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it. ...

And the assets are still in the trust. ..." (2 J.A. 397)

"Q. It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)

(Read ft.nt. #11, here also.)

planning documents, along with a diagram explaining Hoyt's power to make gifts of Mary's property, shortly after her death. [10] Thus, the Wrays were aware of all

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[10] What the designation on the diagram "gift power" really means is that Mr. Sibley could gift assets from the decedent's trust to "... **persons or a class of persons designated or described in the instrument creating the power**." 72 C.J.S. Powers § 6. ..." Schaaf, supra, at 350 (Emphasis added.) **By itself, the Special Power** found at paragraph 4.5 in the 1986 **in toto** Trust Amendment (2 J.A. 427) **did not provide any designation of persons or entities to be benefitted** by the Special Power. Therefore, **by itself, the Special Power is and was a void power.** However, paragraph 4.5 is part of the Sibleys' testamentary documents and **in conjuction with certain designations made within the Sibleys' testamentary documents, the persons to be benefitted can be discerned.** Pursuant to the trust as it existed after being modified by the May 2, 1991 Amendment, the final amendment which Mary and Hoyt Sibley, executed together, the only persons who could be found, "described in the instrument creating the (special) power" are James and David Wray. Pursuant to Paragraph 5.5 in the May 2, 1991 Amendment, James and David Wray were to inherit Nevada Legal News. (2 J.A. 455) Pursuant to **Paragraph 5.8 in the May 2, 1991 Amendment, James and David Wray are to inherit the residue of the Trust Estate**. (2 J.A. 456) Pursuant to then still operative paragraph 5.2 which was left intact by the May 2, 1991 Amendment, James and David Wray were to inherit jewelry, clothing, household furniture, and furnishings, personal automobiles, and other articles of tangible personal property. (2 J.A. 428) The only paragraph of these three (5.5, 5.8, and 5.2) which can be used in conjunction with the Special Power found at paragraph 4.5 in order to discern the parties to be benefitted under the Special Power is paragraph 5.8 which tells that the residue of the trust is to go to James and David Wray, since the other two paragraphs (5.5 and 5.2) grant specific gifts which have been set by agreement of Mary and Hoyt Sibley and there is no authority for Hoyt Sibley to enlarge these specific gifts. However, the designated beneficiaries of the residue are to get everything not specifically gifted and thus those beneficiaries are the only persons who can be appropriate beneficiaries of any gift made by authority of paragraph 4.5 **as completed by** any other provision or provisions in the testamentary documents. (Please see the Reply Brief to David Johnson at pages 23-24.) **(But read ft.nt. #6, here again.)**

The diagram also clearly shows that at the death of the second spouse the tax purpose separation of the trust property into two trusts ends and the recombined trust is to go to the beneficiaries **without any provision**

the relevant facts in 1991. The stature of limitations had, therefore, run prior to the Wrays' 1998 complaint. [11]

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for a change of beneficiaries (2 J.A. 422) as is consistent with Mary Sibley's statement: "When I go, everything I have will go to J.H. Wray and David." (2 J.A. 469-470) (Cited at pages 5 & 12 of the Opening Brief.)

[11] Please read footnotes numbers 8 and 9, again here.

As explained in detail in footnote #5, supra, the "Special Power", **as drafted**, was **intentionally** void as a power of appointment. It was only the later **misinterpretation and misuse** of the "Special Power" which could damage Appellants. Appellants were not alerted to this **post 1991** misadministration when they saw the trust **as it was in 1991.** Properly interpreted the "Special Power" was and is merely a tax and creditor avoidance feature, intended by the decedent, Mary Sibley, to be used to preserve her $600,000 estate tax deduction for the benefit of Appellants. **Appellants first learned of the improper administration on December 22, 1997.** (Opening Brief at 27-29, citing to 7 J.A. 1560-1563)

*Further, **the statute of limitations did not commence to run until after the death** of the testator, or in this case, the **surviving settlor, Hoyt Sibley on December 20, 1997, because until this occurrence:***

i) any potential harm caused by any possible negligence by defendant/respondent, Charles Johnson [when after Mary's death, he worked to undo her estate plan] ***was not irremediable; and,***

ii) Plaintiffs/Appellants possessed no enforceable interest in the estate. *(Found in the Opening Brief at 29-31; Found in the Reply to Charles Johnson at 22-24; Found in the Reply to David Johnson at 30)*

*Finally, **even, in a legal malpractice case, when the adequacy of the documentation is the subject of the dispute,** [and as shown supra, in ft. nt. #8, Appellants' action is a broad negligence action] **a cause of action for attorney malpractice for drafting the subject, possibly damaging document accrues on entry of an adverse judgment, settlement, or dismissal of the underlying action, as that is when:***

i) it is clear what the effect of the subject document has been, and

ii) that the subject document has caused damage. *(Found in the Opening Brief at 31-33; Found in the Reply to Charles Johnson at 24-27; Found in the Reply to David Johnson at 31)*

Fraud

A plaintiff in a civil fraud action must prove, among other things, justifiable reliance upon the defendant's misrepresentation. The Wrays allege that Charles Johnson committed fraud by lying in a pretrial deposition. The Wrays presented no evidence that they relied upon the alleged misrepresentation. Accordingly, the district court correctly granted summary judgement to the Johnsons on this claim..[12]

---

[12] Appellants' fraud action is based upon their justifiable reliance that Charles Johnson, as their mother's attorney who set up their mother's trust for them, **would tell the truth** about that trust and upon the fact that Appellants have been denied their inheritance because of Charles Johnson's tortious concealment of the truth. "It is the overwhelming majority rule in testamentary situations, that the intended beneficiaries are entitled to sue the erring attorney for breach of a duty owed directly to them. (Lucas v. Hamm [(1961) 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685] & Heyer v. Flaig, [70 Cal.2d 223, 440 P.2d 161, 74 Cal.Rptr. 225 (1969)] supra.; in accords: § 73 of the **Restatement (Third) of the Law Governing Lawyers**, Tentative Draft No. 8, supra. ..." (See pages 28-35 of the Reply Brief to Charles Johnson, Quoted language is on pages 34-35.) Charles Johnson was charged with "fraud" as part of an amendment to seek punitive damages pursuant to NRS 42.005. (Please see the Amended Complaint at 6 J.A. 1297-1305) With its heading NRS 42.001 reads:

> "NRS 42.001 Definitions; exceptions. As used in this chapter, unless the context otherwise requires and except as otherwise provided in subsection 5 of NRS 42.005: ...
>
> 2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person.
>
> ..." (Emphasis added.)

There is no requirement in the definition of fraud in NRS 42.001, that a person rely upon the "fraud" all is required is "intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person." Obviously, Respondents also realize this, as, in their Answering Briefs, neither Respondent mentioned or tried to contest the validity of the manner in which the punitive damage claim for

...

As these issues dispose of this case, it is unnecessary to reach the parties, remaining arguments. Therefore, we

ORDER the judgment of the district court AFFIRMED." [Emphasis added.]

Respectfully submitted this 30th day of December, 2002.

BY: s/ James Wray

JAMES WRAY, Esq.
Nevada Bar No. 887
3140 East Flamingo Road, Apt. 205
Las Vegas, Nevada 89121
(702) 433-4652
Attorney for Appellant, JAMES WRAY

"fraud" as defined in NRS 42.001 was pleaded. Further, even the District Court originally approved the punitive damages claim. (5 J.A. 1049-1051.) Charles Johnson is alleged to have lied at his deposition with the intent to deprive Appellants of their inheritance. Thus far Charles Johnson's deception has deprived Appellants of their inheritance and continues to damage them. (Opening Brief at pages 23-24 & its addendum at XIII-XVI.)

CERTIFICATE OF MAILING

I have this 30th day of December, 2002, with proper postage attached, mailed a copy of the foregoing **PETITION FOR REHEARING AS A RESULT OF THE EN BANC ORDER OF AFFIRMANCE FILED DECEMBER 17, 2002** to:

Mark Solomon, Esq.
LIONEL, SAWYER & COLLINS
300 S. Fourth St. Suite 1700
Las Vegas, Nevada 89101
Attorneys for Respondent, David Johnson, as Trustee of the HOYT SIBLEY AND MARY SIBLEY 1973 TRUST

Keith Edwards, Esq.
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Attorneys for Respondent, Charles Johnson

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Appellant in Pro Per

Honorable Allan R. Earl, District Judge,
Department #19
Eighth Judicial District Court
200 S. Third St.
Las Vegas, Nevada 89155

Clark County Clerk
200 S. Third St.
Las Vegas, Nevada 89155

s/ James Wray

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Attorney for Appellant, JAMES WRAY

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914 FILED FEB 25, 2003 BY Janette M. Bloom Clerk of Supreme Court Deputy Clerk
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

MOTION THAT THE NEVADA SUPREME COURT

CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003.

&

THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XIX, THE HONORABLE GARY L. REDMON

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David Johnson, as Trustee of
the HOYT SIBLEY AND
MARY SIBLEY 1973 TRUST

With its heading NRAP 27 reads:

> "**RULE 27. MOTIONS**
>
> **(a) Content of Motions; Response; Reply. ...,** **an application for an order or other relief shall be made by filing a motion for such order or relief** ..." (Emphasis Added.)

This Motion is based upon an extrapolation that the Nevada Supreme certainly has the subject powers similar to those found within NRCP 60 which with its heading reads:

> "**RULE 60. RELIEF FROM JUDGMENT OR ORDER**
>
> ...
>
> **(b) Mistakes; Inadvertence; Excusable Neglect; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation ...
> ..."

We have been cautioned, by United States Supreme Court Justice Anthony M. Kennedy:

> "... Just recently, two justices of the United States Supreme Court spoke out against threats to judicial neutrality. One of those threats, according to Justice Anthony M. Kennedy, is campaign spending in state judicial elections. See Joan Biskupie, In Rare Appearances, 2 Justices Concur Against Threats to Neutrality, Wash.Post, December 6,, 1998, available in 1998 WL 22539304. Justice Kennedy made a more impassioned point in summarizing his concerns: "**The law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. All**

that's left is the dictate of a tyrant, or a mob." Dababnah v. West Virginia Bd. Of Medicine, 47 F. Supp.2d 734 (S.D.W.Va. 1999) (Emphasis added.)

On February 20, 2003 this Nevada Supreme Court issued its Order Deny Rehearing in this matter. [1] As both outlined and detailed in Appellants' Petition for Rehearing As a Result of the En Banc Order of Affirmance Filed December 17, 2002 [2] , the Order of December 17, 2002 [3] has **multiple times:**

1) **Grievously misstated the facts in Appellants' case;**

2) Failed to address the relevant issues; and,

3) Failed to apply the applicable law;

all apparently intentionally done in an effort to allow Respondents to escape liability [4] and to allow the theft from

---

[1] The Order Denying Rehearing is Exhibit "3" to this Motion.

[2] Appellants Petition For Rehearing ... is Exhibit "2" to this Motion. **Respondents are urged to answer the allegations within this Petition as those allegations are the basis for this Motion and Respondents' failure to answer these allegations will establish that Respondents can't answer these allegations. Further, should the Nevada Supreme Court refuse to file this Motion or quickly deny it, one of the main reasons for such possible action will obviously be to attempt to save Respondents from the dilemma of not being able to address the issues raised in the Petition.**

[3] The Order of Affirmance filed December 17, 2002 is Exhibit "1" to this Motion.

[4] Appellants have sued:

1) Respondent Charles Johnson, a prominent Nevada Attorney, for malpractice and fraud. Charles Johnson was our mother's attorney and who helped our stepfather changed her estate plan, after she died, to disinherit us from her trust; and,

2) Respondent, David Johnson, the son and legal associate of Charles Johnson, for restitution and accounting because he was made

Appellants of their inheritance from their mother.

On page three of its Dec. 17, 2002 Order of Affirmance [Exhibit #1], the Nev. Sup. Court states:

> "We review de novo a district court's grant of summary judgment. **We review all evidence in the light most favorable to the party opposing summary judgment. The party opposing summary judgment must present evidence creating a genuine issue of material fact**, and may not rely on "gossamer threads of whimsy, speculation, and conjecture.." " (Emphasis added.)

But on pages 2-5 of their Dec. 31, 2002 Petition for Rehearing as a Result of the En Banc Order of Affirmance Filed December 17, 2002 [Exhibit #2], Appellants have told the Nevada Supreme Court:

"OUTLINE OF THE MOST MAJOR factual Falsehoods IN THE ORDER

The Supreme Court Order is based upon SIX

Trustee of our trust by his father. (See the Petition ... which is Exhibit "2")

The Supreme Court found:

1) Appellants failed to comply with the statute of limitations, even though Appellants filed their action within 5 months of:

a) Being Damaged; and/or

b) Discovering Appellants were disinherited; and/or

c) Discovering that David Johnson had been made trustee of the trust which rightfully belongs to Appellants; and,

2) Appellants could not sue our mother's attorney for fraud because we had not relied upon the lies he told at his deposition. (See the Order of Affirmance filed December 17, 2002 which is Exhibit "1")

The Supreme Court further used the legal malpractice statute of limitations to dismiss the action against David Johnson, even though he was not sued for malpractice, but was only sued for restitution and an accounting. (See the Order of Affirmance filed December 17, 2002 which is Exhibit "1")

(6) MAJOR factual Falsehoods.

Falsehood #1: Appellants sued Charles Johnson for errors in drafting the trust. **The truth is:**

A) Paragraph 14 in both the Complaint and Amended Complaint reads:

"14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)

B) Charles Johnson testified, after consulting with his attorney, regarding the affirmative defense of statute of limitations:

"A. **As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place**, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

" ...;

b) Breach of his duty to [should read "of"] **loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where** [should read "were"] **completely denied their inheritance;** ..." (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8 [of the Petition].)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000 unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6 [of the Petition].)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.** (Please see footnote #4 on page 6 [of the Petition].) After Mary's death, Hoyt was restricted **by the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [See footnote #1 on page 3 of the Petition.]

C) Pursuant to identical **Sibley wills provisions 4.3,** the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death.** ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on page 5 [of the Petition].)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in 1991. **The truth is:**

A) Although Mr. Sibley with the help of

Charles Johnson's firm did prepare six [6] amendments from 1992 -1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley (December 20, 1997).** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2 [of the Petition]); because the special power is void (ft.nt. #4 & ft.nt. #5 [of the Petition]); and because Hoyt could not alone appoint or direct distributions from the survivor's trust (ft.nt.#1 [of the Petition]), **etc**.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it.

...

And the assets are still in the trust. ..." (2 J.A. 397)

"Q. **It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.**

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)
(Please see footnote #9 on page 8 [of the Petition].)

Falsehood #4: Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary Sibley died. **The truth is:** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.** All **six of those times are accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died.** (Please see footnote #6 on page 7 [of the Petition] where this truth is elaborated upon.)

Falsehood #5: David Johnson has been sued for malpractice and fraud. **The truth is:** David Johnson has been sued **only for restitution and an accounting** and in his Answering Brief at pages 24-25, David Johnson states:

"Wray's claim in this litigation is for legal malpractice against Charles Johnson ...

...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8 [of the Petition].)

> **Falsehood #6:** Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their **justifiable reliance that Charles Johnson,** as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust.** Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10 [of the Petition].)

The fraudulent Order of Affirmance of December 17, 2002, as perpetuated in the February 20, 2003 Order Denying Rehearing have:

1) Denied Appellants their inheritance without due process;

2) Confirmed that the present Nevada Supreme Court is neither impartial nor competent [5] ;

3) Made Nevada a very hostile place for potential testators and their intended beneficiaries;

4) Confirmed to Nevada trust and estate attorneys that they need **not** be honest or competent because they can count on the Nevada Supreme Court to protect them from any consequences resulting from their dishonest or incompetent acts. [6]

5) Confirmed to Nevada Trustees that the Nevada

---

[5] Cannon 3B of the Nevada Code of Judicial Conduct reads: " ... (2) **A judge shall be faithful to the law**" and maintain professional competence in it.. ..." (Emphasis added.)

[6] Cannon 2B of the Nevada Code of Judicial Conduct reads: "**A judge shall not allow** family, **social, political** or **other relationships to influence the judge's judicial conduct or judgment**. ..." (Emphasis added.)

Supreme Court will not require them to restore or account for property they withhold from its rightful owner[s].

Realizing it would be totally futile to ask the present Nevada Supreme Court to investigate itself and the corruption within it, Appellant James Wray **is requesting that this corrupt Nevada Supreme Court not do so**, as Appellant is planning to file an 42 USCA § 1983 action against six of the current justices of this Nevada Supreme Court and pursuant to Nesses v. Shepard, 68 F.3d 1003, 1005, 1006 (7th Cir.1995):

> "[Plaintiff's] mistake was to bring his suit alleging the corruption of the tribunal in the same allegedly corrupt state court system. (A mode of proceeding that casts great doubt upon the good faith of his claim). He could not expect to win if ... his allegations of corruption are true; and the judgment against him that was rendered in that suit bars his efforts to litigate the same claim in federal court."

Rather than attacking the corruption within the Nevada Supreme Court, what Appellant is attacking in this Motion is the referred to Orders of the Nevada Supreme Court dated: December 17, 2002 and February 20, 2003.

The totally amazing blatantly bias Orders of December 17, 2002 and February 20, 2003 are in violation of **Section 1 of the 14th Amendment to the United States Constitution which reads**:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; **nor shall any State deprive any person of** life, liberty, or **property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**" (Emphasis added.)

Appellants does hereby thus also ask that the Nevada Supreme Court make a finding that its Orders of December 17, 2002 and February 20, 2003 did indeed violate **Section 1 of the 14th Amendment to the United States Constitution** and for this reason, **paramount to any other reason,** these Orders are unconstitutional and must be replaced with a new order[s] in conformity with:

1) The **actual facts** as disclosed in the joint appendix,

2) An accurate evaluation of the issues which were raised in the Briefs; and

3) An application of the applicable law pertaining to the arguments raised in the Briefs.

Respectfully submitted this 24th day of February, 2003.

BY: s/ James Wray

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Attorney for Appellant, JAMES WRAY

CERTIFICATE OF MAILING

I have this 24th day of February, 2003, with proper postage attached, mailed a copy of the foregoing "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2002 & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution**" to:

Mark Solomon, Esq.
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Attorneys for Respondent, David Johnson, as Trustee of the HOYT SIBLEY AND MARY SIBLEY 1973 TRUST

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Honorable Allan R. Earl, District Judge,
Department #19
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Clark County Clerk

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David Samowski, Executive Director and General Counsel, Nevada Commission on Judicial Discipline
P.O. Box 48
Carson City, Nevada 89702 [7]

---

[7] Because of your position, you should receive a copy of this, But, I do not want this Motion or any of its Exhibits to be deemed by you to constitute a complaint because:

1) I DO NOT WANT TO BE CHARGED WITH CONTEMPT OF COURT IN AN ATTEMPT TO SHUT ME UP as the Nevada Supreme Court has ruled:

"**Confidentiality of proceedings of commission; charges against judge are to be made public only upon finding by commission of probable cause.** Confidentiality of proceedings of the commission on judicial discipline (see A.R.J.D. 5) is given first priority under the mandate of Nev. Art. 6 § 21 that the supreme court shall make appropriate rules for confidentiality of all proceedings before commission, except decision to censure, retire or remove justice or judge. **Supreme court has determined that such proceedings will be made public (ONLY) upon a finding by the commission after a scheduled hearing that probable cause exists for disciplinary action (see A.R.J.D. 16).** In adopting A.R.J.D. 16, supreme court has assured that every time the commission determines that there is probable cause to believe that clear and convincing evidence could supply the evidentiary basis for imposing discipline, the public will be made aware of the full extent of the charges against the judge. (See NRS 1.425 et seq.) Whitehead v. Commission on Judicial Discipline, 111 Nev. 70, 893 P.2d 866 (1995)" Quote from **Annotations to NRS** made at start of this series. [Emphasis added.]; and,

2) **Appellant realizes it would be totally futile to ask you to discipline the Nevada Supreme Court**, and Appellant is planning to file an 42 USCA § 1983 action against six of the current justices of this Nevada Supreme Court and pursuant to Nesses v. Shepard, 68 F.3d 1003, 1005, 1006 (7th Cir.1995):

> "[Plaintiff's] mistake was to bring his suit alleging the corruption of the tribunal in the same allegedly corrupt state court system. (A mode of proceeding that casts great doubt upon the good faith of his claim). He could not expect to win if ... his allegations of corruption are true; and the judgment against him

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---

that was rendered in that suit bars his efforts to litigate the same claim in federal court."

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s/ James Wray

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Exhibit #1 to:

"MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2002 & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution":

Order of Affirmance (filed Dec. 17, 2002)

is found at 4a.

Exhibit #2 to:

"MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2002 & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution":

Petition for Rehearing As a Result of the En Banc Order of Affirmance Filed December 17, 2002 (filed Dec. 31, 2002)

is found at 15a.

Exhibit #3 to:

"MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2002 & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution":

Order of Denying Rehearing (filed Feb. 20, 2003)

is found at 10a.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914 FILED MAR 3, 2003 BY Janette M. Bloom Clerk of Supreme Court Deputy Clerk
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

APPEAL FROM THE EIGHT (sic)JUDICIAL DISTRICT COURT, DEPARTMENT XIX, HONORABLE GARY L.

REDMON

RESPONDENT DAVID JOHNSON'S OPPOSITION TO MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS FRAUDULENT ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003, & THAT THE NEVADA SUPREME COURT FIND ITS ORDER ARE IN VIOLATION OF SECTION 1 OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

Mark A. Solomon, Esq., NSB #418
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Attorneys for Respondent David Johnson,
Trustee of the Hoyt Sibley and Mary M. Sibley 1973 Trust

Respondent David Johnson, Trustee of The Hoyt Sibley and Mary M. Sibley 1973 Trust summarily opposes Appellant's Motion That the Nevada Supreme Court Correct its Fraudulent Orders of December 17, 2002 and February 20, 2003, & That the Nevada Supreme Court Find its Orders Are in Violation of Section 1 of the 14th Amendment to the United States Constitution ("Motion") on the ground that it is completely without merit and not authorized by the Nevada Rules of Appellate Procedure. On that basis, Respondent will not substantively address the arguments raised in the Motion unless the Court so requests.

Respondent further requests that this Court award Respondent attorneys (sic) pursuant to N.R.A.P. 38 for being required to review and respond to the Appellant's appeal, or more specifically, the instant Motion, which is being processed

by Appellant in a frivolous manner.

DATED this 28th day of February, 2003

LIONEL SAWYER & COLLIN
By: s/ Dana A Klieber
MARK A. SOLOMON, ESQ.
DANA A. KLIEBER, ESQ.
300 So. Fourth Street, #1700
Las Vegas, Nevada 89101

Attorneys for Respondent David Johnson, Trustee of The Hoyt Sibley and Mary M. Sibley 1973 Trust

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of February, 2003. (sic), I placed a true and correct copy of the above and foregoing Respondent David Johnson's Opposition to Motion That the Nevada Supreme Court Correct its Fraudulent Orders of December 17, 2002 and February 20, 2003, & That the Nevada Supreme Court Find its Orders Are in Violation of Section 1 of the 14th Amendment to the United States Constitution in the United States Mail, postagle prepaid to the last know address of:

Keith Edwards, Esq.
Edwards, Hale, Sturman & Atkins
415 South Sixth Street, #300
Las Vegas, Nevada 89101
Attorneys for Respondent, Charles Johnson

James Wray, Esq.
3140 East Flamingo Road, Apt. 205
Las Vegas, Nevada 89121
Attorney for Appellant, James Wray

David M. Wray
618 Garden Place
Las Vegas, Nevada 89107
In Pro Per

s/ Erin S. Winter
Erin Winter
An employee of Lionel Sawyer & Collins

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, Individually; and CHARLES JOHNSON and/or DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914 FILED MAR 5, 2003 BY Janette M. Bloom Clerk of Supreme Court Deputy Clerk
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, Individually; and CHARLES JOHNSON and/or DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

RESPONDENT, CHARLES JOHNSON'S OPPOSITION TO APPELLANT'S "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS FRAUDULENT ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003 & THAT THE NEVADA SUPREME COURT FIND ITS ORDER (AS NOW INCORRECTLY WRITTEN)ARE IN VIOLATION OF SECTION 1 OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION"

It is difficult to even determine if the Respondent, Charles Johnson, is required to Answer the most recent filing by the Appellant, or if it would be more appropriate for the Attorney General to respond. It is obvious that the Appellant, James Wray, should be sanctioned for the most recent filing with the Court.

It should be noted that the Appellant has been denied: his appeal; his request for reconsideration of the appeal; his *en banc* appeal; and its request for reconsideration of the *en banc* appeal. I would like to outline the history of the Plaintiff's filings in this case which more than justify denial of the Appellant's present motion and the award of fees and costs to the Respondent:

	Title of Pleading	Date filed or Date Signed
1.	Opening Brief, Appellant, James Wray	2-22-00
2.	Motion to Be Granted Permission of the Supreme Court to file a Brief which exceeds 30 pages	2-22-00
3.	Motion to of Appellant, James	3-4-00

	Wray, for Permission to File a Reply to the Oppositions filed by Respondents to His Motion to be Grabted (sic) Permission of the Supreme court to File his Brief which exceeds 30 pages.	
4.	Reply of Appellant, James Wray to Opposition Filed by Respondents to his Motion to be Granted Permission of the Supreme Court to File his Brief which exceeds 30 pages	3-4-00
5.	Motion of Appellant, James Wray, for Permission to File his 37 page Reply Brief to the Answering Brief Filed On Behalf of Respondent/ Defendant, Charles Johnson	4-24-00
6.	Reply Brief of Appellant, James Wray, to the Answering Brief Filed on Behalf of Respondent/ Defendant, Charles Johnson	4-24-00
7.	Appellant's Motion to File an Over-Length Opening Brief	5-11-00
8.	Opening Brief of Appellant, James Wray	5-11-00
9.	Motion of Appellant, James Wray, for Permission to File a Reply to the Opposition Filed By Respondents to his Motion to File an Over-Length Opening Brief	5-22-00

10.	Appellant's Reply to the Oppositions Filed by Respondents to Appellant's Motion to File an Over-Length Opening Brief	5-22-00
11.	Motion of Appellant, James Wray, for Permission to File this NEW 39 page Brief to the NEW Answering Brief Filed by Respondent/ Defendant, David Johnson	6-29-00
12.	Errata and Notice Regarding the New Reply Brief of Appellant to the New Answering Brief Filed on Behalf of Respondent	7-3-00
13.	Motion of Appellant James Wray for Permission to File his 35 Page Brief to the Answer Filed by Respondent David Johnson	9-27-00
14.	Reply of Appellant James Wray to The Opposition of David Johnson to Appellant's Motion to File his 35 Page Reply Brief	10-10-00
15.	Motion of Appellant James Wray for Permission to File a Reply to the Opposition of David Johnson to Appellant's Motin (sic) for (sic) File his 35 Page Reply Brief	10-10-00
16.	Petition for Rehearing of Appellant, James Wray	12-19-01

17.	Appellant's Petition for *En Banc* Reconsideration	4-4-02
18.	Appellant's Amended Petition for *En Banc* Reconsideration Intended to Replace the Earlier Petition	4-8-02
19.	Emergency Application for Stay of Remittitur Pleading (sic) *En Banc* Reconsideration Intended to be Directed to Each Justice as well as Appropriate Staff	4-8-02
20.	Emergency Motion for *En Banc* Reconsideration of the Order Denying Motion to Stay Issuance of the Remittitur Which was Filed April 12, 2002	4-16-02
21.	Petition for Rehearing as a Result of the *En Banc* Order of Affirmance Filed December 17, 2002	12-30-02
22.	Motion That the Nevada Supreme Correct its Fraudulent Orders of December 17, 2002 and February 23, 2003, & That the Nevada Supreme Court Find its Orders (As Now Incorrectly Written) Are in Violation of Section 1 of the 14th Amendment to the United States Constitution.	2/24/03 (sic)

NRAP 38 specifically authorizes costs, and attorney fees for frivolous appeals. The purpose of this rule is to deter

dilatory tactics. Flangas v. Herrmann, 100 Nev. 1, 677 P.2d 594 (1984); Works v. Cuhn, 103 Nev. 65, 732 P.2d 1373 (1987). It is respectively requested that the Court advise your Respondent, Charles Johnson, individually, if a substantive Responding Brief is required to the Appellant's latest Motion. It is also respectfully requested that the Court award attorney's fees and costs to Respondent, Charles Johnson, for the necessity of continuing to be required to answer frivolous Motions, Petitions, Petitions for Rehearing, and Petitions for Reconsideration.

RESPECTIVELY SUBMITTED this 3rd day of March, 2003.

EDWARDS, HALE, STURMAN, ATKINS & CUSHING, Ltd.

By: s/ Floyd A. Hale
FLOYD A. HALE
Nevada Bar No. 1873
415 South Sixth Street, Suite 300
Las Vegas, Nevada 89101-6937
Attorney for Defendant and Respondent, Charles Johnson

CERTIFICATE OF MAILING

I hereby certify that I am an employee of EDWARDS, HALE, STURMAN, ATKINS & CUSHING, Ltd., and that on the 3 day of March, 2003, I deposited for mailing at Las Vegas, Nevada, a true and accurate copy of the foregoing Opposition, addressed to the following:

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Las Vegas, NV 89121
Attorney for Appellant, James Wray

David M. Wray
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Las Vegas, NV 89107
In Pro Per

Mark A. Solomon, Esq.
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Attorneys for Respondent, David Johnson
Trustee of the Hoyt and Mary Sibley 1973 Trust

s/Not readable
Employee of EDWARDS, HALE, STURMAN,
ATKINS & CUSHING, Ltd.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914 FILED MAR 10, 2003 BY Janette M. Bloom Clerk of Supreme Court Deputy Clerk
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE

UNITED STATES FOR A WRIT OF CERTIORARI

&

MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XIX, THE HONORABLE GARY L. REDMON

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David Johnson, as Trustee of
the HOYT SIBLEY AND
MARY SIBLEY 1973 TRUST

These Motions are based upon the points and authorities included within these Motions; the briefs and joint appendix filed in this appeal; the Supreme Court Order of Affirmance filed December 17, 2002 which is made Exhibit #1 to these Motions; the Supreme Court Order Denying Rehearing which is made Exhibit #2 to these Motions; ***"Respondent David Johnson's Opposition to Motion that the Nevada Supreme Court Correct its Fraudulent Orders ..." which is made Exhibit #3 to these Motions; "Respondent Charles Johnson's Opposition to "Motion that the Nevada Supreme Court Correct its Fraudulent Orders ..." " which is made Exhibit #4 to these Motions***; The Affidavit of Appellant James Wray which is made Exhibit #5 to these Motions; and the "Proposed Reply to The Oppositions Filed by Respondents: Charles Johnson and David Johnson to Appellants' Motion That The Nevada Supreme Court Correct Its Fraudulent Orders ..." which is made Exhibit #6 to these Motions.

With its heading, NRAP 41 reads:

"RULE 41. ISSUANCE OF REMITTITUR; STAY OF REMITTITUR

(a) Date of Issuance. The remittitur of the court shall issue twenty-five (25) days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or other proceeding is dismissed pursuant to Rule 42, a formal remittitur shall issue. A certified copy of the judgment and opinion of the court, if any, and any direction as to costs shall be included with the remittitur. The timely filing of a petition for rehearing will stay the remittitur until disposition of the petition unless otherwise ordered by the court. **If the petition is denied, the remittitur shall issue twenty-five (25) days after entry of the order denying the petition unless the time is shortened or enlarged by order.** Unless the court

otherwise orders, a petition for full court reconsideration shall not affect the finality of the judgment of the court or stay issuance of the remittitur.

(b) Stay of Remittitur Pending Application for Certiorari. **A stay of the remittitur pending application to the Supreme Court of the United States for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed sixty (60) days unless the period is extended for cause shown.** If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States. Upon the filing of a copy of an order of the Supreme Court of the United States denying the petition for writ of certiorari the remittitur shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the remittitur.

[As amended; effective August 26, 2002.]" (Emphasis added.)

With its heading NRAP 27 reads:

"RULE 27. MOTIONS

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by

a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. **If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion.** Any party may file a response in opposition to a motion other than one for a procedural order (for which see subdivision (b)) within seven (7) days after service of the motion, but motions authorized by Rules 8 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion. **A reply to the opposition to a motion shall not be filed unless permission is first sought and granted by the Supreme Court.**

[As amended; effective September 1, 1989.]

..." (Emphasis added.)

Appellant James Wray does hereby Motion the Nevada Supreme Court for a stay of remittitur pending application for a writ of certiorari to the Supreme Court of the United States. Appellant requests that the stay be for the **greater period of time of either**:

1) Sixty days after expiration of the 25 day period after entry of the Nevada Supreme Court's February 20, 2003 Order Denying Rehearing (Exhibit #2 to these Motions.) or

2) Sixty days after issuance of an Order on Appellant's "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2002 & THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution**" (Please see the Affidavit of James Wray which is Exhibit #5 to these Motions.).

Appellant's experience is that it is common for the Nevada Supreme Court to take about 2 months to address a

Motion. Appellant is, in the subject joint Motions, not only seeking a stay but also seeking permission to file a Reply to the Oppositions filed by Respondents. Therefore it could indeed take the Nevada Supreme Court a matter of months to decide this matter. (Please see the Affidavit of James Wray which is Exhibit #5 to these Motions.). Further, Appellant's "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS** ..." has requested relief which, if granted will alter rights adjudicated (incorrectly) by the Nevada Supreme Court in its Orders of December 17, 2002 (Exhibit #1 to these Motions) and February 20, 2003 (Exhibit #2 to these Motions.); because in his "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS** ...", Appellant has told the Supreme Court that:

> "The Supreme Court Order (of December 17, 2003 which is confirmed by the Order of February 20, 2003) is based upon **SIX (6) MAJOR factual Falsehoods**.
>
> **Falsehood #1:** Appellants sued Charles Johnson for errors in drafting the trust. **The truth is:**
>
> A) Paragraph 14 in both the Complaint and Amended Complaint reads:
>
> "14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)
>
> B) Charles Johnson testified, after consulting with his attorney, regarding the affirmative defense of statute of limitations:
>
> "A. **As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place**, the defense is just a catchall

defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

" ...;

b) Breach of his duty to [should read "of"] **loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where** [should read "were"] **completely denied their inheritance;** ..." (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8 [of the Petition].)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000 unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6 [of the Petition].)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.**

(Please see footnote #4 on page 6 [of the Petition].) After Mary's death, Hoyt was restricted **by the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [See footnote #1 on page 3 of the Petition.]

C) Pursuant to identical **Sibley wills provisions 4.3**, the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death**. ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on page 5 [of the Petition].)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in 1991 (Therefore, Appellant's April 24, 1998 Complaint [1.J.A. 1] was filed after the running of the Statute of Limitations).. **The truth is:**

A) Although Mr. Sibley with the help of Charles Johnson's firm did prepare six [6] amendments from 1992 -1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley (December 20, 1997).** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2 [of the Petition]); because the special power is void (ft.nt. #4 & ft.nt. #5 [of the Petition]); and because Hoyt could not alone appoint or direct distributions from the

survivor's trust (ft.nt.#1 [of the Petition]), etc.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it.

...

And the assets are still in the trust. ..." (2 J.A. 397)

"Q. It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)
(Please see footnote #9 on page 8 [of the Petition].)

Falsehood #4: Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary Sibley died. **The truth is:** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.** All **six of those times are accounted for as the 1992-1997 trust amendments**

which Appellants only discovered after Mr. Sibley died. (Please see footnote #6 on page 7 [of the Petition] where this truth is elaborated upon.)

Falsehood #5: David Johnson has been sued for malpractice and fraud. **The truth is:** David Johnson has been sued **only for restitution and an accounting** and in his Answering Brief at pages 24-25, David Johnson states:

"Wray's claim in this litigation is for legal malpractice against Charles Johnson ...

...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8 [of the Petition].)

Falsehood #6: Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their **justifiable reliance that Charles Johnson**, as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust.** Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10 [of the Petition].) (Please see the Affidavit of James Wray which is Exhibit #5 to these Motions.)

The above correction of the facts by Appellants is uncontested by either Respondent, in their respective Oppositions to the

Appellant's "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...", [1] Respondents have stated:

> "... Respondent (David Johnson, Trustee) will not substantively address the arguments raised in the Motion unless the Court so requests." Opposition of David Johnson (Exhibit #3 to these Motions.) at page 2.

and

> "... It is respectively requested that the Court advise your Respondent, Charles Johnson, individually, if a substantive Responding Brief is required by Appellant's latest Motion. ..." Opposition of Charles Johnson (Exhibit #4 to these Motions.) at page 4.

and we have been instructed:

> "A timely motion to amend a judgment (or the findings of fact or conclusions of law) that raises "questions of substance" that may alter rights already

---

[1] Logic requires the conclusion that if, Respondents could have opposed Appellant's well documented correction of the facts, they would have done so in their Oppositions. Indeed: Nevada District Court Rule 13 provides:

"...

3. Within 10 days after the service of the motion, the opposing party shall serve and file his written opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

..." (Emphasis added.)

Certainly, filing Oppositions in which intentionally and admittedly no substantive oppositions to arguments have been made constitutes not opposing such arguments.

adjudicated, and its not addressed to "mere matters of form," tolls the time to appeal. *Leishman v. Associated Wholesale Electric Co.*, 318 U.S. 203, 205-06 (1943); *United States v. Crescent Amusement Co.*, 323 U.S. 173, 177 (1944); *Zimmern v. United States*, 298 U.S. 167, 169 (1936). Such a substantial change in judgment by the judge or court on its own motion will have the same effect. *Zimmern v. United States, supra.* ..." **Supreme Court Practice**, 8th Edition (2002).

Should the Nevada Supreme Court not correct its Orders of December 17, 2002 and February 20, 2003, Appellant intends to file a Writ of Certiorari to the United States Supreme Court. (Please see the Affidavit of James Wray which is Exhibit #5 to these Motions.)

Appellant further urges that the Nevada Supreme Court in the interest of justice and because the decision on the subject Motion, if negative to Appellant, will be the subject of other court[s] review[s], throughly consider the subject Motion and also allow Appellant to file a Reply consisting of, at least, a date version of the Proposed Reply. (The Proposed Reply is Exhibit #6 to these joint Motions.

Appellants' damages, as a result of the **theft** of their trust, are substantial. While Appellants have been improperly denied discovery of what is in their **stolen** trust, a 1995 document Appellants were able to obtain says that the trust then had a value of $3,175,000. (Please see the Affidavit of James Wray which is Exhibit #5 to these Motions.)

Respectfully submitted this 6th day of March, 2003.

BY: s/ James Wray

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Attorney for Appellant, JAMES WRAY

CERTIFICATE OF MAILING

I have this 6th day of March, 2003, with proper postage attached, mailed a copy of the foregoing **"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ..."** to:

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Exhibit #1 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...":

Order of Affirmance (filed Dec. 17, 2002)

is found at 4a.

Exhibit #2 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...":

Order Denying Rehearing (filed Feb. 20, 2003)

is found at 10a.

Exhibit #3 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...":

Respondent David Johnson's Opposition to Motion That the Nevada Supreme Court Correct its Fraudulent Orders of December 17, 2002 and February 20, 2003, & That the Nevada Supreme Court Find its Order Are in Violation of Section 1 of the 14th Amendment to the United States Constitution
(filed Mar 3, 2003)

is found at 55a.

Exhibit #4 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...":

Respondent, Charles Johnson's Opposition to Appellant's "Motion That The Nevada Supreme Court Correct Its Fraudulent Orders of December 17, 2002 And February 20, 2003 & That The Nevada Supreme Court Find Its Order (As Now Incorrectly Written)are in Violation of Section 1 of The 14th Amendment to The United States Constitution"
(filed Mar 5, 2003)

is found at 59a.

Exhibit #5 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...":

Affidavit of Plaintiff/ Appellant, James Wray in Suppport ...

is found at just infra at 89a.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

AFFIDAVIT OF PLAINTIFF/APPELLANT, JAMES WRAY IN SUPPORT OF HIS:

MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI

&

MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...

STATE OF NEVADA)
)SS
CLARK COUNTY)

COMES NOW, JAMES WRAY, first being duly sworn and deposes and says under penalty of perjury in support of his **"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ..."**:

1. I am one of the Plaintiffs/Appellants in the above entitled action. I am also a licenced attorney and have prepared all of the Appellant's briefs, the Appendix, and all of the items filed in this matter on my behalf in this appeal and most of the Plaintiffs' pleadings and papers in the case when it was in the district court. Mary Sibley was my mother and I was raised by her. I am thus very familiar with the facts and law relevant to this action. I am an attorney who is licensed in both the State of Nevada and the State of California who has primarily made my living since graduating from law school in 1979 doing legal research and writing in various capacities.

2. Based upon my knowledge of the facts and law relevant to this matter, I do attest that the Nevada Supreme Court must find in favor of Appellants in this appeal, if the Nevada Supreme Court will impartially and accurately

evaluate the **ACTUAL** evidence; address all of the issues; and apply the law pertaining to this matter.

3. In my "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS** ...", which was filed February 25, 2003, I have pointed out and documented to the Supreme Court that:

"The Supreme Court Order (of December 17, 2003 which is confirmed by the Order of February 20, 2003) is based upon **SIX (6) MAJOR factual Falsehoods**.

Falsehood #1: Appellants sued Charles Johnson for errors in drafting the trust. **The truth is:**

A) Paragraph 14 in both the Complaint and Amended Complaint reads:

"14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)

B) Charles Johnson testified, after consulting with his attorney, regarding the affirmative defense of statute of limitations:

"A. **As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place**, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

" ...;

b) Breach of his duty to [should read "of"] **loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he**

did engage in what had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where [should read "were"] **completely denied their inheritance; ...**" (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8 [of the Petition].)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000 unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6 [of the Petition].)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.** (Please see footnote #4 on page 6 [of the Petition].) After Mary's death, Hoyt was restricted by **the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [See footnote #1 on page 3 of the Petition.]

C) Pursuant to identical **Sibley wills provisions 4.3,** the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death.** ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on page 5 [of the Petition].)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in

1991. **The truth is:**

A) Although Mr. Sibley with the help of Charles Johnson's firm did prepare six [6] amendments from 1992 - 1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley (December 20, 1997).** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2 [of the Petition]); because the special power is void (ft.nt. #4 & ft.nt. #5 [of the Petition]); and because Hoyt could not **alone** appoint or direct distributions from the survivor's trust (ft.nt.#1 [of the Petition]), **etc**.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it. ... And the assets are still in the trust. ..." (2 J.A. 397)

"Q. It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times

at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)
(Please see footnote #9 on page 8 [of the Petition].)

Falsehood #4: Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary Sibley died. **The truth is:** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.** All six of **those times are accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died.** (Please see footnote #6 on page 7 [of the Petition] where this truth is elaborated upon.)

Falsehood #5: David Johnson has been sued for malpractice and fraud. **The truth is:** David Johnson has been sued **only for restitution and an accounting** and in his Answering Brief at pages 24-25, David Johnson states:

"Wray's claim in this litigation is for legal malpractice against Charles Johnson ...

...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8 [of the Petition].)

Falsehood #6: Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their

justifiable reliance that Charles Johnson, as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust**. Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10 [of the Petition].)"

4. It has been my experience that it is common for the Nevada Supreme Court to take about 2 months or longer to address a motion. In the subject Motions , I am not only seeking a stay but also seeking permission to file a Reply to the Oppositions filed by Respondents. Therefore, it could take the Nevada Supreme Court a matter of months to decide this matter.

5. Should the Nevada Supreme Court not correct its Orders of December 17, 2002 and February 20, 2003, Appellant intends to file a Writ of Certiorari to the United States Supreme Court. While that Petition is not yet finalized a possible question presented for such Petition is:

> "Petitioner and his brother lost their inheritance from their mother when the Nevada Supreme Court dismissed their case on statute of limitation grounds. The undisputed facts showed petitioner and his brother filed their action within the applicable time limits. The question presented is:
>
> Whether citizens are denied their right to due process, as guaranteed by §1 of the 14th Amendment to the United States Constitution, when a corrupt state court fraudulently misstates the facts of their case, and dismisses the case based upon the misstated facts."

6. I properly sought and was improperly denied discovery of the assets that were or are in the trust and the holder and value of them. This denial is one of the wrongs I

have appealed to the Nevada Supreme Court. (Please see my Opening Brief at pages 25-27.) However, one document which I was able to receive, in discovery from the file of Respondent Charles Johnson, shows that **in 1995 the Trust was worth $3,175,000.** (Please see that document which I have placed right after this affidavit.) Thus, Appellants have suffered severe damage as a result of the actions of Respondents as, so far, sanctioned by the Nevada Supreme Court.

s/ James Wray
JAMES WRAY

SUBSCRIBED AND SWORN to and before me
this 6th day of March, 2003

s/ Lynda Williams
NOTARY PUBLIC in and for said
COUNTY AND STATE

LYNDA WILLIAMS
Notary Public State of Nevada
No. 94-4685-1
My appt. exp. Apr. 2, 2005

Because it is scribbled on, crossed out in part, and amended in handwriting, the 1995 document showing a then value of the trust of $3,175,000 is not suitable for reproduction by rewriting it as is required for inclusion in the appendix. However, for the purposes of the Petition for Writ of Certiorari, all that is needed is the following important information from it:

1) It is entitled: "Hoyt Sibley, Family Trust, 1973."

2) It is dated: "8/1/95."

3) It gives a total value of: "3,175,000."

Exhibit #6 to:

"MOTION FOR STAY OF REMITTITUR PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI & MOTION FOR PERMISSION TO FILE A REPLY TO THE OPPOSITIONS FILED BY RESPONDENTS TO APPELLANT'S MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS

Proposed Reply to the Oppositions ...

is found at just infra at 99a.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 34914
DAVID WRAY, Appellant, vs. CHARLES JOHNSON, INDIVIDUALLY; CHARLES JOHNSON AND/OR DAVID JOHNSON TRUSTEE OF THE HOYT SIBLEY, AND MARY SIBLEY 1973 TRUST Respondents.	)	No. 35027

PROPOSED REPLY TO THE OPPOSITIONS FILED BY

RESPONDENTS: CHARLES JOHNSON AND DAVID JOHNSON TO APPELLANTS' MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS OF DECEMBER 17, 2002 AND FEBRUARY 20, 2003.

&

THAT THE NEVADA SUPREME COURT FIND ITS ORDERS (AS NOW INCORRECTLY WRITTEN) ARE IN VIOLATION OF Section 1 of the 14th Amendment to the United States Constitution

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XIX, THE HONORABLE GARY L. REDMON

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Attorneys for Respondent,
David Johnson, as Trustee of the HOYT SIBLEY AND MARY SIBLEY 1973 TRUST
1973 TRUST

In Appellant's "MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS ...", Appellant has pointed out to the Supreme Court that:

"The Supreme Court Order (of December 17, 2003 which is confirmed by the Order of February 20, 2003) is based upon SIX (6) MAJOR factual Falsehoods.

Falsehood #1: Appellants sued Charles Johnson for errors in drafting the trust. The truth is:

A) Paragraph 14 in both the Complaint and Amended Complaint reads:

"14. That Plaintiffs allege that they suffered damages as a result of the carelessness and negligence of the Defendant [Charles] Johnson and have suffered economic harm in excess of $10,000 and/or according to proof." (1 J.A. 3 and 6 J.A. 1297, respectively)

B) Charles Johnson testified, after consulting with his attorney, regarding the affirmative defense of statute of limitations:

"A. As I understand, I am being sued for negligence. And inasmuch as no specific acts of negligence were alleged or the time when those alleged acts took place, the defense is just a catchall defense to cover whatever allegations might come out." (2 J.A. 397. See reference to his consulting with his attorney, etc. on 2 J.A. 396 .) [Emphasis added.]

C) Charles Johnson has been sued for allegations including, but not limited to:

" ...;

b) Breach of his duty to [should read "of"] loyalty to his client, Mary Sibley, when after the death of Mary Sibley, and without any written authorization for him to do so, he did engage in what

had become a conflict of interest, as he aided Hoyt Sibley to completely undo the estate plan agreed to by Mary and Hoyt Sibley with the result that Plaintiffs where [should read "were"] **completely denied their inheritance;** ..." (Opening Brief at page 32, citing to 7 J.A. 1502.) [Emphasis added.]

(Please see footnote #8 on pages 7 & 8 [of the Petition].)

Falsehood #2: Appellants were alerted to the potential for disinheritance by means of the "special power" when they saw the **trust and wills** as they were in 1991. **The truth is:**

A) The "special power", as **intentionally** written, is, **as a matter of long-established law, void as a power of appointment.** Further, the void "special power" is only valid as a tax planning tool, which only pertained to the $600,000 unified credit amount **put in decedent's trust to shelter it from taxation.** (Please see footnotes #s 5 and 4 both found on page 6 [of the Petition].)

B) In order to protect it from being taxed, the maximum amount that could be thereby sheltered, $600,000, was placed in the **decedent's** trust. **Everything else was placed in the survivor's trust.** (Please see footnote #4 on page 6 [of the Petition].) After Mary's death, Hoyt was restricted **by the trust provisions** from appointing or directing distributions **to anyone** of any part of: the **survivor's** trust. [See footnote #1 on page 3 of the Petition.]

C) Pursuant to identical **Sibley wills provisions 4.3,** the residues of their estates could only be distributed: "... according to the terms of said Trust and any **amendments made thereto prior to my death.** ..." Thus, Mary Sibley's death prevented further amendment of the trust. (Please see footnote #3 on

page 5 [of the Petition].)

Falsehood #3: Appellants were damaged, and knew it, when property was gifted from the trust by means of the "Special Power" to other persons soon after Mary's death in 1991 (Therefore, Appellant's April 24, 1998 Complaint [1.J.A. 1] was filed after the running of the Statute of Limitations). **The truth is:**

A) Although Mr. Sibley with the help of Charles Johnson's firm did prepare six [6] amendments from 1992 -1997 (1 J.A. 175-184) which purported to gift property to other persons,

i) Appellants only **learned of the existence** of the 1992-1997 amendments on December 22, 1997. (7 J.A. 1560-1563 [Note paragraphs 4 & 5.]. See Opening Brief at pages. 27-29.)

ii) These amendments, as drafted, were **only** to **activate and then damage Appellants upon the death of Hoyt Sibley (December 20, 1997).** (1 J.A. 175-184 and 7 J.A. 1560-1563)

iii) These amendments **are invalid** because Mary's will provision 4.3 forbid amending the trust after her death (ft.nt #2 [of the Petition]); because the special power is void (ft.nt. #4 & ft.nt. #5 [of the Petition]); and because Hoyt could not alone appoint or direct distributions from the survivor's trust (ft.nt.#1 [of the Petition]), **etc**.

B) Except for the testamentary gift 1992-1997 amendments, there is absolutely no evidence in the Joint Appendix of any gift from the trust from the time of Mary Sibley's death on July 28, 1991 to December 22, 1997 to anyone except to the Appellants.

C) The Joint Appendix contains absolutely no evidence that Appellants had knowledge of gifts to anyone but themselves from their mother's death on July 28, 1991 to December 22, 1997.

D) At his deposition of February 26, 1999, Charles Johnson testified:

"... the trust is still intact, as I understand it. ...

And the assets are still in the trust. ..." (2 J.A. 397)

"Q. **It's your testimony, again, to the best of your knowledge there has been no outright distribution of *any interest* of the 1973 Trust.**

A. That's right.

MR. SOLOMAN: Terry, you said it five or six times at least. It's established, he doesn't know of any." (2 J.A.. 404) (Emphasis added.)
(Please see footnote #9 on page 8 [of the Petition].)

Falsehood #4: Hoyt Sibley used the "special power" to make gifts to the Appellants after Mary Sibley died. **The truth is:** There is **absolutely no evidence** in the Joint Appendix that demonstrates that Hoyt Sibley **used the "special power" or any formal trust method** when he made gifts to Appellants. **In fact, on page 7 of his Answering Brief, David Johnson states that Hoyt only amended the trust or used the power of appointment *a total of 6 times* after Mary's death.** All six of those times are **accounted for as the 1992-1997 trust amendments which Appellants only discovered after Mr. Sibley died.** (Please see footnote #6 on page 7 [of the Petition] where this truth is elaborated upon.)

Falsehood #5: David Johnson has been sued for malpractice and fraud. **The truth is:** David Johnson has been sued **only for restitution and an accounting** and in his Answering Brief at pages 24-25, David Johnson states:

"Wray's claim in this litigation is for legal

malpractice against Charles Johnson ...

...Wray alleged no wrongdoing ... against the Trustee [David Johnson] ... but ... requested an accounting of the Trust and an order of restitution ..."

Thus, the action against David Johnson **is not subject to dismissal under a statute of limitations pertaining to legal malpractice actions.** (See ft.nt. #2 on pg. 5 & ft.nt. #8 on pgs. 7-8 [of the Petition].)

Falsehood #6: Appellants' claim against Charles Johnson for fraud for lying at his deposition is not proper because Appellants did not rely upon Charles Johnson's lies. **The truth is:** Appellants' fraud action is based upon their **justifiable reliance that Charles Johnson**, as their mother's attorney, who set up their mother's trust for them, **would tell the truth about that trust.** Appellants have been denied their inheritance, and thus damaged, because Charles Johnson did not tell the truth. (Please see footnote #12 on page 10 [of the Petition].) (Please see the Affidavit of James Wray which is Exhibit #1 to this Reply.)

The above correction of the facts by Appellants is uncontested by either Respondent as, in their Respective Oppositions to the Appellant's "**MOTION THAT THE NEVADA SUPREME COURT CORRECT ITS fraudulent ORDERS** ...", Respondents have stated:

"... Respondent (David Johnson, Trustee) will not substantively address the arguments raised in the Motion unless the Court so requests." Opposition of David Johnson at page 2.

and

"... It is respectively requested that the Court

advise your Respondent, Charles Johnson, individually, if a substantive Responding Brief is required by Appellant's latest Motion. ..." Opposition of Charles Johnson at page 4.

Logic requires the conclusion that if, Respondents could have opposed Appellant's well documented correction of the facts that they would have done so in their Oppositions. Indeed: Nevada District Court Rule 13 provides:

"...

3. Within 10 days after the service of the motion, the opposing party shall serve and file his written opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

..." (Emphasis added.)

Certainly, filing Oppositions in which intentionally and admittedly no substantive oppositions to arguments have been made constitutes not opposing such arguments.

Finally, even though they have been unable to counter any of Appellant's corrections to the subject orders, both Respondents have alleged that Appellants motion is "frivolous" and have sought attorney's fees (David Johnson) and attorney's fees and costs (Charles Johnson) for preparation of their "no argument" Oppositions. As is demonstrated in the summary of factual falsehoods, supra, which Respondents did not even argue against, Appellant and his brother:

1) Filed their complaint well within the statute of limitations.

2) Have properly stated their punitive damages fraud claim against Charles Johnson.

3) Have never even sued David Johnson for malpractice, so it was improper to terminate the cause of action against him on a malpractice statute of limitations basis.

4) Are rightfully entitled to the Sibley trust pursuant to the trust provision and Mary Sibley's will.

Thus, it is totally ridiculous for Respondents to seek a recovery of attorney's fees and costs from Appellants who have properly pursued an action [to] recover Appellants' trust which has been **stolen** from them with the assistance of Charles Johnson and which is now in the possession and control of David Johnson who is the trustee of that trust and who has been therefore sued for restitution and an accounting.

Respectfully submitted this _____ day of _____, 2003.

BY: s/ James Wray

JAMES WRAY, ESQ.
Nevada Bar No. 887
3140 East Flamingo Road, Apt. 205
Las Vegas, Nevada 89121
(702) 433-4652
Attorney for Appellant, JAMES WRAY

Reporter Jane Ann Morrison wrote the following article which appeared in the **Las Vegas Review-Journal** on December 11, 2002 on page 5B:

"JUDGING THE JUDGES

Panel debates election, appointing

A failed judicial candidate blasted Nevada's judges and what he called "the corruption of our judicial system by money" during a Tuesday forum on whether judges should be elected or appointed.

John Curtas damned both methods of choosing judges before admitting he didn't have a solution to fix the system.

Curtas, who lost to incumbent District Judge Donald Mosley by 26 percentage points in November's election, said: "I think we have a supremely unqualified judiciary. ... (The "..." is in the original article.) There are a huge number of sitting judges at every level who have no business being there."

The judges who obtain their posts through gubernatorial appointments "are more atrocious than those elected," Curtas said without naming any names.

The deciding factor in judicial races is how much money can be raised for television ads, Curtas said during the daylong forum at the University of Nevada Las Vega Boyd Law School.

The panel included lawyers, judges, academics and a newspaper editor {Thomas Mitchell, Editor of the LVRJ}, who argued whether judges should be appointed or elected, whether public financing of judicial races would be a viable alternative, and whether the judicial surveys co-sponsored by the Clark County Bar Association and the Review-Journal are a public service or open to manipulation.

Curtas, came down on the side of the Missouri plan started in 1940, where judges are appointed and

then run for retention, giving voters a chance to oust them.

But District Judge-elect Jackie Glass, who unseated the only judicial incumbent to lose in the 2002 election, Judge Jeffrey Sobel, favored elections over appointments.

"I don't believe I'd have this opportunity through an appointment," she said. "I wasn't politically active. I didn't know people." She downplayed the role money played in her victory, crediting grass-roots campaigning and hard work.

However, she also used $150,000 of her own money to pay for a massive television ad campaign.

Law school professor Jeffrey Stempel argued that appointments are better, but said there are "too many entrenced folks who don't want to make it happen." He cited the political consultants and the television stations that benefit from the judicial ads as advocates for status quo.

Public financing of judicial races will not happen in Nevada, UNLV political science professor Michael Bowers concluded. Wisconsin, the first state to use public financing to provide money for judges to campaign, has been a failure because people aren't checking a box on the their state income tax forms to send $1 to judges, so the pot to finance the races is about half what is needed.

"Elections do little to hold judges accountable," Bowers said, outlining his reasoning to support appointments.

Nevada Supreme Court Justice Nancy Becker said one way to limit the fund-raising demands for judges is to have a three week filing period for judges in the January before the election. By law, judges cannot start raising money until January, and if they don't draw opponents at the end of the filing, she said incumbent judges shouldn't be able to raise money

afterward.

Currently, they begin raising money in January and don't find out until May whether they have an opponent, leading them to raise huge sums to be prepared in case they draw a challenger.

The forum panelist also discussed the judicial surveys that are released every two years and included anonymous evaluations of judges by attorneys who practice in their courts.

Family Court Judge Cynthia Dianne Steel blasted the surveys as unreliable because the evaluations are anonymous and "people know now how to maneuver it."

"Why is the Clark County Bar Association sanctioning them when in many cases it demeans judges?" Steel asked.

Bar Association President Cam Ferenbach said in the 20 years he's been practicing law, there is a "world of difference" in how judges treated attorneys in his first 10 years, when there were no surveys, and in the past 10 years, where there have been five surveys. Now there is some accountability and, Farenebach said, "Its made a big difference in how judges treat attorneys." "

42 U.S.C. § 1983

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. suit in equity, or other proper proceeding for redress, except that in an action brought against a judicial officer for an act or commission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1257(a)

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statute of, or commission held or authority exercised under the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Courts of Appeals.

No.

In The Supreme Court of the United States

JAMES WRAY,
Petitioner,
v.
CHARLES JOHNSON, INDIVIDUALLY;
CHARLES JOHNSON AND/OR DAVID
JOHNSON TRUSTEE OF THE HOYT SIBLEY
AND MARY SIBLEY 1973 TRUST,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada

---

PETITION FOR WRIT OF CERTIORARI

James Wray
3140 E. Flamingo Road, #205
Las Vegas, Nevada 89121

Petitioner is not in the U.S. Supreme Court Bar. So, he is filing his petition pro se.

AFFIDAVIT OF PETITIONER JAMES WRAY IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI MADE TO THE UNITED STATES SUPREME COURT

STATE OF NEVADA)
)SS
CLARK COUNTY)

COMES NOW, JAMES WRAY, first being duly sworn and deposes and says under penalty of perjury in support of his Petition for a Writ of Certiorari to the United States Supreme Court:

1. I am the Petitioner in the above entitled action. I am also a licenced attorney and have prepared all of the Appellant's briefs, the Appendix, and all of the items filed in this matter on my behalf in the appeal to the Nevada Supreme Court and most of the Plaintiffs' pleadings and papers in the case when it was in the District Court. My bother, David, and I were the only children of Mary Sibley and we were raised by her. I am thus very familiar with the facts and law relevant to this action. I am an attorney who is licensed in both the State of Nevada and the State of California who has primarily made my living since graduating from law school in 1979 doing legal research and writing in various capacities.

2. Based upon my knowledge of the facts and law relevant to this matter, I do attest that if this case ever get impartial and accurate evaluation of the evidence; correct addressing of all of the issues; and proper application the law pertaining to this matter, Petitioner and his brother will be determined to be the rightful owners of the trust their mother, Mary Sibley, set up for them.

3. I do not know the exact value of the Sibley trust or everything which is or was in it because I have been unlawfully denied discovery of this information. [Opening Brief at 25-27; Reply Brief to Charles Johnson at 17; Reply Brief

to David Johnson at 28] However, one document dated 8/1/95 which I have received from the Sibley Trust file maintained by David Johnson, indicates that the Sibley trust had a value in 1995 of $3,175,000.00. Not listed on this sheet are my mother's antiques, the Lexus which was the family car when Mr. Sibley died in 1997, my mother's large jewelry collection, and other furniture and personal effects. It is very possible that other assets were not listed as well.

Now, nearly eight years later in 2003, I can pretty accurately estimate that with appreciation, interest, accumulated earnings, on the total trust, which includes, previously very successful, going businesses, and the articles not mentioned in the 1995 document, the total trust is now worth **well in excess of** $5,000,000.00.

4. Petitioner has heard it frequently said that the Nevada judiciary is very corrupt and that when your case comes back from the Nevada Supreme Court you won't know it. This case has proven that this is true. Except for appointments to fill judicial vacancies between elections, Nevada elects its judges and the judicial campaigns are expensive and funded primarily by the law firms and lawyers in town. It is widely believed that such funding greatly influences Nevada court decisions, including those of the Nevada Supreme Court. I have never contributed to a judicial campaign. The **Las Vegas Review-Journal** has the largest circulation in the State of Nevada. It is a mainstream paper

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and not radical. It has printed articles critical of the Nevada judiciary.

S/James Wray
JAMES WRAY

SUBSCRIBED AND SWORN to and before me
this 4th day of April, 2003

s/ Lynda Williams
NOTARY PUBLIC in and for said
COUNTY AND STATE

LYNDA WILLIAMS
Notary Public State of Nevada
No. 94-4685-1
My appt. exp. Apr. 2, 2005